TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 65.

JOHN PRESTON, J'R, APPELLANT,

vs.

THOMAS L. PRESTON, JAMES C. CAMPBELL, ARTHUR C. CUMMINGS, JOHN S. PRESTON, WILLIAM A. STEWART, AND G. W. PALMER.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF VIRGINIA.

FILED APRIL 14, 1875.

SUPREME COURT OF THE UNITED STATES.

No. 65.

JOHN PRESTON, J'R, APPELLANT,

vs.

THOMAS L. PRESTON, JAMES C. CAMPBELL, ARTHUR C. CUMMINGS, JOHN S. PRESTON, WILLIAM A. STEWART, AND G. W. PALMER.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF VIRGINIA.

INDEX.

	Original.	Print.
Bill	2	1
Exhibit A	8	3
B	23	8
C	30	10
D	31	11
E	41	15
F	43	16
I	51	19
K	51	19
Answer	70	26
Exhibit No. 1	72	26
2	92	33
3	92	33
4	95	34
5	95	34
6	102	37
G G	103	37
7	107	40
Deposition for plaintiffs, (16 December, 1873)	109	41
(12 June, 1874)	115	43
Exhibit Z, attached to deposition	136	51
Depositions for defendants	137	51
Exhibit of map to A. McQuown's deposition	153	59
W W to A. McQuown's deposition	154	60
T T to A. McQuown's deposition	156	61
Decree	160	62

	Original.	Print.
Demurre	164	64
Amended bill	167	65
Answer of J. S. Preston to amended bill	170	66
Stewart & Palmer to amended bill	170	66
Clerk's certificate	172	67
Certificate of J. S. Preston with oath attached	174	67
Bond	176	68

1 Pleas be'ore the circuit court of the United States for the western district of Virginia, at the United States court-room in the city of Lynchburg, on the 25th day of September, A. D. 1874.

JOHN PRESTON, J'R, PLAINTIFF,
against
THOMAS L. PRESTON, JAMES C. CAMPBELL, Arthur C. Cummings, and William Alex. Stuart, and George W. Palmer, defendants. } In chancery.

Be it remembered that heretofore, to wit, in the clerk's office of the circuit court of the United States for the western district of Virginia, in the city of Lynchburg, on the 8th day of January, A. D. 1873, the said John L. Preston filed his certain bill in chancery against the said Thomas L. Preston, James C. Campbell, Arthur C. Cummings, William Alex. Stuart, and George W. Palmer, which said bill is in the
2 words and figures following, to wit:

In the circuit court of the United States for the district of Virginia, and to the judges thereof:

Complaining, sheweth unto your honors your orator, John Preston, j'r, that he is a citizen of the State of South Carolina; that in the year 1846 M'r's Sarah B. Preston, being seized in fee simple of certain large bodies of land situated in Smyth County, Virginia, known as "The Salt Works estate," devised the same to her three sons, W'm C. Preston, John S. Preston, and Thomas L. Preston. A copy of her said will is herewith exhibited marked "A," and prayed to be read as part of this bill.

That in the year 1847 John S. Preston agreed and covenanted with Thomas L. Preston that he would convey and assign to him all interest, of whatever nature, received by him under and by virtue of his mother's will aforesaid, and, in consideration thereof, Thomas L. Preston, by the same instrument, agreed and covenanted with the aforesaid John that
3 he would convey to him a certain tract of land, described in the covenant as adjoining the said Salt Works estate, the same being in reality a part of said Salt Works estate, called "The Campbellsville tract," containing three hundred and fifty acres, and enough of the lands adjoining thereto to make up a tract of five hundred acres of land. This same "Campbellsville tract" is well known and distinguished from the other parts of said Salt Works estate, and can be easily marked out by meetes and bounds, and the land immediately adjoining thereto is part of the estate devised as aforesaid by M'r's Sarah B. Preston, and came, as this bill will show, into the ownership and possession of the said Thomas L. Preston. The aforesaid deed of agreement between John S. Preston and Thomas L. Preston was duly recorded in the clerk's office of Smyth County, Virginia, in the year 1847. A copy thereof is herewith exhibited, marked "B," and prayed to be read as a part of this bill.

That the aforesaid John S. Preston, in the year 1870, granted and conveyed all his interest in the said Campbell's tract and what was necessary to make it five hundred acres, as aforesaid, to your orator; a
4 copy of his deed is herewith exhibited, ma'ked "C," and prayed to be read as a part of this bill.

That in the year 1847 Thomas L. Preston conveyed all his interest in the aforesaid Salt Works estate, as devised by his mother, to one Connally F. Trigg, in trust to secure the payment of fifty thousand dollars to John S. Preston, the same being a part of the consideration for

the articles of agreement aforesaid between John S. Preston and Thomas L. Preston. A copy of this deed is herewith exhibited, marked "D," and prayed to be read as a part of this bill.

That the aforesaid Connally F. Trigg has removed beyond the limits of this State and is now a citizen of the State of Tennessee, and one Arthur C. Cummings has been duly substituted as trustee in said deed in his place. A copy of the order of court making this substitution is herewith exhibited. That in the year 1848 W'm C. Preston conveyed all his interest in the aforesaid Salt Works estate to Thomas L. Preston, a copy of which conveyance is herewith exhibited, marked "E," and prayed to be read as a part of this bill.

That in the year 1850 Thomas L. Preston conveyed all his interest in the aforesaid Salt Works estate to the same Connally F. Trigg, in
5 trust to secure the payment of twenty-five thousand dollars to W'm C. Preston, a copy of which conveyance is herewith exhibited, marked "F," and prayed to be read as a part of this bill.

That in the year 1859, Thomas L. Preston conveyed all his interest in said Salt Works estate to Robert Gibboney, in trust for the benefit of his creditors, a copy of which conveyance is herewith exhibited, marked "I." That the said Robert Gibboney has since departed this life, and one James C. Campbell, of Washington County, Virginia, has been duly substituted as trustee in said deed; a copy of the order of court so appointing him is herewith exhibited, marked "K." That the said Thomas L. Preston has never executed any conveyance of the aforesaid Campbellsville tract, and enough in addition to make a tract of five hundred acres, according to the tenor and effect of his aforesaid covenants, either to the said John S. Preston or to your orator, nor has he put either of them into possession of the same. That the aforesaid Campbellsville tract, and all the land adjoining thereto which was at any time owned or possessed by the said Thomas L. Preston, is at this
6 time in the possession of two persons named respectively W'm Alex. Stuart and George W. Palmer, who claim that it belongs to themselves, claiming, as your orator is informed, that it was conveyed to them by Robert Gibboney, trustee as aforesaid, by the consent of John S. Preston, given before he executed the deed for the same to your orator.

Your orator has many times demanded of the said Stuart and Palmer that they should surrender the possession of the said land to him, both before and since five years from this date, but the said Stuart and Palmer have uniformly refused so to do.

Your orator therefore prays that Thomas L. Preston, James C. Campbell, Arthur C. Cummings, W'm Alex. Stuart, and George W. Palmer, who are all citizens of the State of Virginia, may be made parties defendant to this bill, and that each one may be required to make true and full answers to each particular allegation contained herein, so far as his knowledge extends, and that the said W'm Alex. Stuart and George W. Palmer may be each required especially to disclose whether, when they made their purchase from Robert Gibboney, trustee, they knew, or had any reason to believe, that Thos. L. Preston had
7 covenanted, as is herein shown, that he would convey the aforesaid hundred acres to John S. Preston; that a commissioner or commissioners may be appointed to allot to your orator enough land adjoining the said Campbellsville tract to make with the same a tract of five hundred acres; that the aforesaid W'm Alex. Stuart George W. Palmer may be decreed and required to surrender to your orator the possession of such tract, to be held by your orator subject to all

liens and encumbrances which any person may show that it is liable to; that it may be referred to one of the commissioners of this court to enquire and make report of how much the said W'm Alex. Stuart and George W. Palmer are liable to pay to your orator in the way of rents and profits for the same, and that your orator may have such other and general relief as shall seem consistent with equity; and your orator will ever pray, &c.

BRADLY T. JOHNSON,
W'M L. ROYALL,
Sol's for Pl'ff.

8 Exhibit A, referred to in the foregoing bill, is in the words and figures following, to wit:

I, Sarah B. Preston, of Abingdon, Virginia, do make my last will and testament in the following manner:

1st. I do hereby revoke all other and former wills made by me.

2nd. I give and devise to my three sons, William C. Preston, John S. Preston, and Thomas L. Preston, and to their several heirs forever, my Salt Works estate, embracing and including therein as well the original and principal tract containing the wells, as all the additions subsequently acquired, and all my lands of every description, whether cleared or woodland, either adjacent to or in the vicinity of the Salt Works estate, in the counties of Smyth and Washington.

This devise is intended to embrace all lands lying as above on the north of the summit of Walker's Mountain, within such distance of the works as may make them convenient, useful, or advantageous appurtenances to the enjoyment of the estate, either for supplying wood or other products to the Salt Works, together with all mines, minerals, wells, furnaces, buildings, or other fixtures, plaister banks, and
9 other appurtenances thereto whatsoever.

Upon this devise of the Salt Works estate to my three sons, I charge them with the payment of eighty thousand dollars, upon the terms, in the manner, and with the conditions and limitations set forth in this will.

3rd. I direct that the sum of eighty thousand dollars charged upon the Salt Works by the next preceeding clause to be paid by my said three sons in ten annual payments of eight thousand dollars each.

The first instalment shall be payable twelve months after my decease.

The said several instalments shall pass into six equal portions in the following manner: Five of them shall go to the use and benefit of my five daughters now living, or their lineal heirs, (children or descendants.) It is my clear and expressed will and intention that the fund devised by this clause for the benefit of my daughters shall belong to them individually, for their personal use and benefit, untrammelled by the obligations and uncontrolled by the authority of their husbands, forming thus a separate, distinct, and independant property.

10 The shares of my daughters Susan, Sophonisba, and Margaret shall be paid to themselves personally, as they fall due, by my three sons, or their representatives, unless they, or the survivors or survivor of them, in the exercise of a discretion which I hereby vest in them, shall deem it better, in order to attain the object above expressed, of securing this fund beneficially to my daughters, to invest the same, or any portion thereof, in such manner as they may consider most advantageous and most conducive to the preservation of the fund, and the interests of their sisters and their families. My executors hereinafter named, and the survivors and survivor of them, are hereby con-

stituted trustees of so much of the said fund charged on the Salt Works as shall fall to the shares of my daughters Eliza and Sally. They are invested with full power over the investment and management of the same, so that the profits thereof shall be applied to the use and benefit of each of my said two daughters during coverture. In the event of either of my said two d'ughters becoming sole, the said trust, as to her portion, shall cease, and she shall have immediate possession and entire control thereof.

11 In the event of the death of either of my said two d*ua*ghters, her interest in the said trust-fund (except so much thereof as she shall dispose of by will or testamentary appointment under the power hereinafter bestowed on my d'ughters) shall pass to her lineal heirs.

This fund, consisting of the portions of my five d'ughters of the charge aforesaid, being invested as a special provision for them, in the event of the death of either of them without lineal heirs, then so much of her portion as shall not have become due before her death shall pass in equal portions to her surviving sisters or their lineal heirs. My said d'ughters shall each have power to dispose, by will or testamentary appointment in the nature of a will, of everything given to them or for their benefit by this will, except such instalments of the charge upon the Salt Works as may not have accrued during their lives. The sixth portion of the said sum of eighty thousand dollars I hereby devise to my four granddaughters, Sally Campbell Preston, daughter of my son William, Sallie Campbell Thomas, daughter of my daughter Susan, Sally Campbell Breckenridge, daughter of my daughter Sophonisba,

12 and Sally Campbell Preston, daughter of my son John, jointly, in equal portions. I' either of them shall die childless, so much of her portion as may not have accrued during her life shall survive to my other granddaughters named as above. If my said three sons, or any or either of them, or their representatives, shall, during the continuance of the said term of ten years, take the Salt Works into their own hands and work the same, then there shall be allowed a credit of three years, without interest for the first year, upon each of the said instalments thereafter falling due during such occupation and working. If *it* my death the annual rent or (should the property be occupied by my said sons, or any or either of them, or their representatives) the annual value of the Salt Works shall be twelve thousand dollars or upwards, then, so long as the rent or value aforesaid is not below twelve thousand dollars per annum, the annual payments aforesaid for the benefit of my said daughters and granddaughters shall be eight thousand dollars. But if at the commencement, or at any time during the continuance of the said term of ten years, the annual rent or value aforesaid

13 shall be reduced to ten thousand dollars, then during the continuance of such reduction the said instalments shall be redused to six thousand dollars annually, thus diminishing the sum of eighty thousand dollars aforesaid by two thousand dollars for each year which the reduction shall apply. If the annual rent or value aforesaid of the Salt Works shall at any time during the said term of ten years be less than ten thousand dollars, then, during the existence of such diminished value. (during the term aforesaid,) there shall be a further reduction upon the said instalments according to the proportion ascertained by the instance given of a reduction of ten thousand dollars.

It is my clear and express intention direction that Salt Works estate shall be charge' with the payment of no other or further sums under this will than is provided in the previous clauses hereof. Upon the death of either of my said sons, the exclusive control and manage-

ment of the said Salt Works estate shall pass and survive to the survivors or survivor; the heirs or representatives of those dying first being merely entitled to receive their portion of the profits, but being expressly and altogether excluded from all power or right to interfere with
14 the possession or management of the estate; nor shall the widow or widows of those dying first be entitled to dower of the interests of the deceased in the estate, but of the profits thereof only.

I give and devise to my said sons, in trust for my daughter Sally B. Floyd, my house in Abingdon, in which she now lives, together with the garden lots near the same, and the lot on which the brick stable stands; also my meadow and field to the southeast of Abingdon, called the King's Mountain land.

They shall permit my said daughter to occupy and enjoy said property should she prefer doing so. If not, they shall manage it for her advantage, and apply the rents and profits to her separate use. Should she survive her husband, they shall convey the said property in fee-simple to her and her heirs.

I give and bequeath to my son Thomas L. Preston and his heirs my mansion-house near Abingdon, with the lots and grounds thereto attached on the south side of the main western road; and also, all my lots situated on the northern side of the said road, between the Presbyterian church and the house of J. W. C. Watson's. I also devise to him and his heirs all my lands to the south of said road, between my said mansion-house and the creek west of Abingdon, adjoining
15 the lands of David Campbell, T. H. Preston, Robert R. Preston, the estate of Andrew Russell, deceased, and others. I also devise to him and his heirs all my lands lying in the neighborhood of Abingdon, to the north and northwest of the village, adjoining the lands of C. F. Trigg; of the heirs of J. L. White, dec'd; of James White, deceased, and others. I likewise give and bequeath to my son Thomas, one-half of all the furniture and plate of which I may die possessed.

In consideration of the devise of the said real estate, plate, &c., to Thomas, I charge him with the payment of three thousand dollars within three years after my death, one thousand dollars of which I devise to my grandson, James McDowell; one thousand to my daughter, Susan; and one thousand to my daughter Sophonisba Breckenridge, which shall be in part satisfaction of an order on Robert Wickliff, of Kentucky, given to my said daughter's husband, R. J. Breckenridge, by my husband, during his life. I also divise to my said son Thomas and his heirs the following slaves: Flora Wallace, her son James, Judy, John Black, Allen, and Cyrus Gannaway.

I give, devise, and bequeath to my daughter Margaret B. F.
16 Hampton and her heirs all my lands and lots and real estate of every description (not now involved in litigation) in and near the city of Louisville, Kentucky, and all rents, rent-charges, or benefit of what kind soever, reserved on lease or contracts respecting lands or lots in or near to the said city of Louisville, (excepting, as above, such as there may be now suits pending in relation to the title of,) of which said lands, lots, rents, rent-charges, or benefits reserved as aforesaid I may die seized. I also give to my said daughter and her heirs the following slaves: Patience, John, and Ton.

I give and devise to my grandsons John M. Preston and Charles H. Preston, children of my late daughter Maria, jointly to them and their heirs, the house and lots thereto attached, in Abingdon, formerly owned by John Fivecoats, and the house and lots thereto attached, in Abingdon, as the Old Academy. Should either of my grandsons die before

attaining twenty-one years, childless, his interest to survive to his brother. Should both die in their minority, the property aforesaid to fall back into the residuary fund of my estate.

17 Having already made a deed to my late daughter Maria of my lands at and near the Seven-Mile ford and Aspenvale, with a reservation of a life-estate to myself in Aspenvale, for the greater certainty and more complete assurance, I do hereby give, bequeath, and confirm to John M. Preston, my late daughter's husband, for his life, and upon his death to the heirs of my late daughter Maria in fee-simple, all my lands lying in Smyth County, to the south of Walker's Mountain, on both sides of the middle fork of Holston River.

I give and bequeath to my son John S. Preston and his heirs the following slaves, and the increase of the female: Henry Spot, Polly, and William.

I give and bequeath to my son William C. Preston and his heirs the following slaves: Cook Lewis, Isaac, Alfred, and Jim Reagan. I likewise give and devise to my said son a bond or note which he owes me of five hundred dollars.

I give and bequeath to my granddaughter Sally Campbell Preston, daughter of my son William, and her heirs the following slaves, with the increase of the females: Barney, old Phebe, Mahala, and little Phebe.

18 In the event of the success in a suit now pending in Kentucky with the heirs of Arthur L. Campbell, for a tract of land near Louisville, I hereby authorize and empower and direct my executors to convey the said tract of land to my daughter Margaret and her heirs. But if the said suit is lost, I direct my executors to proceed to recover by suit or otherwise, in their discretion, satisfaction for the lost of said tract of land from the estate of Major William Preston, according to the contract existing between him and my late husband. I further authorize, empower, and direct my executors to convey or pay to my said daughter Margaret and her heirs whatever land or money may be thus recovered or received.

My lands upon Cole River I devise to my daughter' Susan McDowell and Sophonisba Breckenridge and their several heirs, to be equally divided between them.

I direct that whatever debts I may owe at my death shall be paid out of the sums arising from debts due to me and such money as I may leave on hand. Out of the residue of such debts and money, my executors shall hold six thousand dollars, in trust, for my daughter Eliza and her children, investing and managing the same in the manner most

19 conducive, in their judgment, to the interests of my said daughter and her children, and applying the profits thereof to their use and benefit. In the event of my said daughter surviving her husband, the trust shall cease, and the fund shall be her absolute property. Whatever may remain of the proceeds of the debts due me and money on hand as aforesaid, after paying my debts and creating the said trust-fund, shall be distributed by my executors equally amongst all my daughters and their heirs. The shares of my daughters Eliza and Sally, being held and managed by my said executors, in trust, for their benefit, under the same directions and provisions as are contained in a former cla'se, in reference to the disposition of their proportions of the fund charged upon the devise of the Salt Works estate.

I do hereby expressly declare, ordain, and appoint that the advancements which I have made and shall make to my children during my life, and the several devises, legacies, bequests, and provisions made in my will shall be taken in full satisfaction by them and their heirs of all

claim, right, and interest which they may have or claim in the
20 estate of my late husband, General Francis Preston; the said advancements, devises, legacies, bequests, and provisions, whether of my own patrimonial estate or its proceeds, or of that devised to me by my husband, being made with anxious desire and deliberate purpose, all things considered, of doing that full, equal, and impartial justice to all so earnestly enjoined by my husband's will, and which I myself have so much at heart.

I, lastly, hereby appoint my three sons, William C. Preston, John S. Preston, and Thomas L. Preston, executors of this my last will and testament. I devise and bequeath to them, and to their several heirs, all my estate of every description, real, personal, and mixed, of which I may die seized, or to which I may be entitled, not herein otherwise bequeathed, devised, or disposed of, making them hereby my general residuary devisees. I request the court granting probate hereof to require no security of my said executors for the execution hereof.

In testimony whereof I have signed my name and affixed my seal to duplicates hereof this 11th day of November, 1842.

SARAH B. PRESTON. [SEAL].

Signed, sealed, acknowledged, and published as the last will of
21 Sarah B. Preston, in our presence, and attested by us in her presence and at her request.

B. R. JOHNSTON.
JOHN C. GREENWAY.
DAVID C. CUMMINGS.

30th JANUARY, 1844.—I have in my possession three hundred dollars which I gave Margaret B. F. Hampton some time ago. She wishes a full set dining china purchased with it. If I die, I wish as much money added to that sum as will purchase a very full and fine set, either given to her, or as she may direct.

SARAH B. PRESTON.

At a court held for Washington County, the 27th day of July, 1846.

The last will and testament of Sarah B. Preston, deceased, was exhibited in court and proved by the oath of John C. Greenway and David C. Cummings, two of the subscribing witnesses thereto, and a codicil thereto, bearing date the 30th day of January, 1844, was also exhibited in court, and the said John C. Greenway and David C. Cummings, being duly sworn, severally deposed that they were well acquainted
22 with the handwriting of the testatrix, and that they verily believe the said codicil and the name Sarah B. Preston thereto subscribed to be wholly written by the said testatrixe's own proper hand; and thereupon the said will and codicil are ordered to be recorded.

And on the motion of Thomas L. Preston, one of the executors named in the said will, who took the oath of an executor prescribed by law and entered into and acknowledged his bond in the sum of one hundred and fifty thousand dollars, conditioned as the law directs, and it having been requested by the testatrix that no security should be required of the executors on their obtaining probate of the said will, a certificate is therefore granted the said Thomas L. Preston for obtaining titles testamentary on the estate of the said Sarah B. Preston, deceased, in due form, without giving security. And liberty is reserved to the other ex-

ecutors named in the said will to join in the probate when they shall think fit.

Test:

RICHARD H. LYNCH, *D. C.*

A Copy. Teste:

DAVID C. CUMMINGS, *D. C.*

23 Exhibit B, referred to in the foregoing bill, is in the words and figures following, to wit:

An agreement made and entered into this 30th day of August, 1847, between John S. Preston of the one part and Thomas L. Preston of the other part, witnesseth: That the said John S. Preston hath this day bargained and sold unto the said Thomas L. Preston all the right, title, claim, and interest which he, the said John S., has derived or is entitled to as one of the devisees under the will of his mother, Sarah B. Preston, dec'd, in the Salt Works estate, in the county of Smyth, and all the lands of every description whatever, cleared or woodland, either adjacent to or in the vicinity of the said Salt Works estate, in the counties of Smyth and Washington. It being intended by this sale to embrace the said John S. Preston's interest, being the one-third part thereof, in the said Salt Works estate and all the lands, with their appurtenances, which were devised therewith by the said Sarah B. Preston, dec'd, to her three sons, W'm C. Preston, John S. Preston, and Thomas L. Preston. The said John S. Preston also agrees to sell, transfer, and assign unto the said Thomas L. Preston all the right, title, and interest
24 in the estate of his mother, Sarah B. Preston, deceased, of every description, real, personal, and mixed, to which he the said John S. Preston is or may be entitled, as one of the residuary devisees under the will aforesaid. And the said John S. Preston further covenants and agrees with the said Thomas L. Preston that he will make to him, by deed or deeds, with general warranty, a good and sufficient right and title to his interest aforesaid in the Salt Works estate and all the lands and appurtenances devised therewith as aforesaid, and also to his residuary interest aforesaid in the estate of the said Sarah B. Preston, dec'd.

And the said John S. Preston doth also agree to transfer to the said Thomas L. Preston a note drawn by the late firm of John S. Preston & Co., in favour of the said John S. Preston, for the sum of sixteen thousand dollars, and which fell due on the 1st day of January, 1836, and the said John S. Preston does hereby transfer, assign, and set over the above-described note, and all moneis due and to become due thereon unto the said Thomas L. Preston, his executors, administrators, or assigns, the said John S. Preston in no case holding himself responsible for the recovery or payment of the same, but the risk and loss, if any, to be borne by the said Thomas L. Preston, his executors, administrators, or assigns. And the said John S. Preston hath also agreed, and
25 he does hereby sell and transfer unto the said Thomas L. Preston all and every right, interest, claim, and demand whatever which he, the said John S. Preston, has, or may have, or in any manner be entitled to, in the property, debts, and assetts of every kind and description, as one of the partners in the manufacture of salt, and in the conduct and management of the Salt Works business, under all and every of the firms of C. H. C. Preston & Co., John S. Preston & Co., Thomas L. Preston & Co., and Thomas L. Preston. The said John S. Preston hath also agreed to surrender to the said Thomas L. Preston two notes which he now holds upon him, one of which notes is for the payment of seventeen hundred dollars, and fell due on the 1st day of January, 1837,

and the other is for the payment of five hundred dollars, and fell due on the first day of January, 1836. And the said John S. Preston does hereby release, acquit, and forever discharge the said Thomas L. Preston from the payment of the said notes, or either of them. And the said Thomas L. Preston, in consideration of the aforesaid sale to him by the said John S. Preston of his interest in the estate of the said Sarah B. Preston, dec'd, as one of the devisees thereof, as aforesaid, and the before named assignment and transfer, and the relinquishment of the debts due by the said Thomas L. Preston to the said Jno. S.
26 Preston the sum of fifty thousand dollars, on or before the 1st day of January, 1860, which said sum is to bear interest at the rate of six per centum per annum from and after the 1st day of January, 1848, which is to be paid to the said John S. Preston annually, to wit, on the 1st day of January, 1849, and on the 1st day of January in each succeeding year, in current bankable funds of the State of Virginia, at the town of Abingdon.

And for the purpose more effectually of assuring and securing to the said John S. Preston the payment of the said sum of fifty thousand dollars and the interest which may accrue thereon, the said Thomas L. Preston further covenants and agrees with the said John S. Preston that he will forthwith execute and deliver to the said John S. Preston a mortgage or deed of trust upon his entire interest in the Salt Works estate and lands aforesaid, as well that interest which the said John S. Preston has this day sold to him, as also the interest which he, the said Thomas L. Preston, has derived in and to said estate and lands appurtenances thereto as one of the devisees of his said mother, S. B. Preston, dec'd. And the said deed of trust is to provide that, in case the said Thomas L. Preston shall make default in the payment of the interest aforesaid at the end of each year as above stipulated, and shall
27 continue in default for the space of ninety days after the same shall fall due in any year, that then the said John S. Preston may have the property embraced in said deed sold, not only for the interest which may so remain unpaid in any year, but also for the principal sum of fifty thousand dollars and whatever interest may be due thereon at the time of such default. The parties hereto intending that if a sale shall at any time be required for the payment of any arrearages of interest on the same herein agreed to be paid by the said Thomas L. Preston to the said John S. Preston, that the same shall likewise be made for the payment of the whole sum, principal & interest. The said Thomas L. Preston, in part for the consideration hereinbefore expressed, also agrees to convey to the said John S. Preston a tract of land adjoining the Salt Works estate, contain'g about three hundred and fifty acres, and known as the Campbellsville tract, and also a sufficient quantity of other lands adjoining the said tract to make up the quantity of five hundred acres of land. The said Thomas L. Preston also agrees that he will receive the note aforesaid for sixteen thousand dollars executed by John S. Preston, as assignor of said note, and that he will seek the payment of said note out of the several assetts of the said firm of John S. Preston & Co. above, and releace the said John S. Preston from all individual liability therefor as one of the partners of the said
28 firm. And it being understood between the parties that the said Thomas L. Preston, in accepting the transfer hereinbefore made to him of the said John S. Preston's interest in the Salt Works firms aforesaid, takes the same without any recourse against the said John S. Preston for any loss which they may sustain, and is to indemnify him against all liability on account of said interest. The said Thomas L

Preston therefore further covenants and agrees with the said John S. Preston that he will fully indemnify and save him harmless against all liabilities of whatever kind to which he, the said John S. Preston, might or could in any manner be subjected on account of his interest aforesaid in any or all of the firms of C. H. C. Preston & Co., John S. Preston & Co., Thomas L. Preston & Co., and Thomas L. Preston before mentioned.

And it is further understood and agreed between the parties that the said John S. Preston is not to be held liable for any charges or responsibilities now existing, or hereafter accruing, upon the said Salt Works estate on account of the legacies charged thereon by the will of the said Sarah B. Preston, dec'd, in favour of her daughters and granddaughters.

In witness whereof we have hereunto set our hands and seals the day & year first herein-above written.

JOHN S. PRESTON. [SEAL.]
THO'S L. L. PRESTON. [SEAL.]

Witness:
CONNALLY F. TRIGG.
C. J. CUMMINGS.

29 WASHINGTON COUNTY, *to wit:*

We, John M. Preston and Elias Odgen, justices of the peace in the county aforesaid, in the State of Virginia, do hereby certify that John S. Preston and Thomas L. Preston, parties to a certain written contract, bearing date the 30th day of August, 1847, and hereto annexed, personally appeared before us in our own county aforesaid, and acknowledged the same to be their act and deed, and desired us to certify the said acknowledgement to the clerk of the county court of Smyth County, in order that the said contract may be recorded.

Given under our hands and seals this 30th day of August, 1847.

JOHN M. PRESTON. [SEAL.]
ELIAS ODGEN. [SEAL.]

VIRGINIA.—In the clerk's office of Smyth County court, October 4th, 1847.

The foregoing written contract between John S. Preston and Thomas L. Preston was presented in the office aforesaid the above date, and, with the certificates of acknowledgments annexed, admitted to be recorded.

Teste: JAMES F. PENDLETON, *C. C.*

A copy. Teste:

W. C. SEXTON, *D. C.*

30 Exhibit C, referred to the foregoing bill, is in the words and figures following, to wit:

Articles of agreement entered into and made this twenty-first day of December, in the year of our Lord eighteen hundred and seventy, between John S. Preston and John Preston, both of Richland County, State of South Carolina, witnesseth: That in consideration of the sum of four thousand dollars secured to be paid to the said John S. Preston, within the term of three years, by the said John Preston, which security is hereby accepted by the said John S. Preston, and in consideration whereof the said John S. Preston hereby bargains and sells to the said John Preston, j'r, all his right, title, and interest, legal and equitable,

in a parcel of land in Smyth County, Virginia, known as "Campbellsville tract," containing five hundred acres more or less, the same being a part of the "Preston Salt Works tract," and reserved by said John S. Preston in his sale to Thomas L. Preston of his interest in said Salt Works tract, under the will of Sarah B. Preston.

[$4.00 U. S. stamps.]

JNO. S. PRESTON.
JOHN PRESTON, J'R.

Subscribed to and acknowledged before me by the above parties, in the city of Richmond, this 22nd day of December, 1870.

E. T. WINSLOW,
Notary Public.

31 VIRGINIA.—At a court held for Smyth County on the 22d day of December, 1870.

The within deed and agreement from John S. Preston to John Preston, j'r, was presented in court with the certificate of acknowledgment annexed; ordered to be recorded.

Teste: W. C. SEXTON, *D. C.*

A copy. Teste:

B. GILDERSLEEVE, J'R, *D. C.*

Exhibit D, referred to the foregoing bill, is in the words and figures following, to wit:

This indenture, made the 30th day of August, in the year of our Lord one thousand eight hundred and forty-seven, between Thomas L. Preston and Anna M. S. Preston, his wife, of the county of Washington and State of Virginia, of the one part, and Connally F. Trigg, of the same county and State, of the other part, witnesseth: That whereas Sarah B. Preston, dec'd, the mother of the said Thomas L. Preston, by her last will and test'ment, which has been duly admitted to record in the county court of said county of Washington, made the following devise, to wit: "I give and devise to my three sons, William C. Preston, John S. Preston, and Thomas L. Preston, and their several heirs, for-
32 ever, my Salt Works estate, embracing and including therein as well the original and principal tract containing the wells, as all the additions subsequently acquired, and all my lands of every description, whether cleared or wood land, either adjacent to or in the vicinity of the Salt Works estate, in the counties of Smyth and Washington. This devise is intended to embrace all lands lying as above on the north of the summit of Walker's Mountain, within such distance of the Salt Works as may make them convenient, useful, or advantageous appurten'ces to the enjoyment of the estate, either for supplying wood or other products to the Salt Works, together with all mines, minerals, wells, furnaces, buildings or other fixtures, plaster-banks, and other appurtenances thereto whatsoever. Upon this devise of the Salt Works estate to my three sons, I charge them with the payment of eighty thousand dollars, upon the terms, in the manner, and with the conditions and limitations set forth hereafter in this will."

And whereas the said Thomas L. Preston and John S. Preston have entered into a written agreement, bearing date on the 30th day of August, 1847, by which the said John S. Preston has bargained and sold unto the said Thomas L. Preston, amongst other things, all the right, title, and interest which he has in the above-named estate and lands by

the above-named devise, and has executed to the said Thomas L.
33 Preston a deed therefor, bearing date on the 30 day of August, 1847, as by the said agreement he had covenanted to do. And whereas, by the agreement aforesaid, the said Thomas L. Preston has covenanted and agreed to pay to the said John S. Preston the sum of fifty thousand dollars, on or before the 1st day of January, 1860, which sum is to bear interest from and after the 1st day of January, 1848, which is to be paid annually, to wit, on the 1st day of January, 1849, and on the first day of each succeeding January, in current bankable funds of the State of Virginia, at the town of Abingdon, and for the purpose of securing to the said John S. Preston the payment of the sum of fifty thousand dollars and the interest thereon annually, as the same shall accrue, the said John S. Preston having agreed further that he would execute a mortgage or deed of trust upon his entire interest in the Salt Works estate and lands aforesaid, as well as that which was sold and conveyed to him by the said John S. Preston as that which he has devised in and to said estate and lands by virtue of the devise aforesaid, and the said Tho's L. Preston having also agreed that in case he shall be in default in the payment of the interest on the debt aforesaid at the end of each year, as above stated, and shall so continue in default for the space of ninety days after the same shall fall due in any year,
34 that then the said John S. Preston m'y have the property embraced in said deed of trust (that is in this deed) sol*d*, not only for the payment of the interest which may remain unpaid in any year, but also for the principal sum of fifty thousand dollars, and whatever interest may be due thereon at the time of such default. And as the said Thomas L. Preston being indebted to the said John S. Preston in the sum of fifty thousand dollars, to be paid to the said John S. Preston on or before the 1st day of January, 1860, with *with* interest thereon from and after the 1st day of January, 1848, which said interest is to be paid annually as above stated; and the said Thomas L. Preston being willing and desirous as well to comply with the terms of the written agreement above stated as to assume to secure to the said John S. Preston the payment of the said sum of fifty thousand dollars, with the interest thereon as above stated, and also to secure the payment of the said interest annually as aforesaid :

This indenture, therefore, witnesseth, that the said Thomas L. Preston, and Anna M. S., his wife, as well in consideration of the premises aforesaid as of one dollar to them in hand paid by the said Connally F. Trigg, the receipt whereof is hereby acknowledged, have granted, bargained, and sold, and by these presents do grant, bargain, sell,
35 and convey unto the said Connally F. Trigg, all the right, title, and interest which they may have or may be entitled to in the Salt Works estate and lands, with their appurtenances, hereinbefore mentioned as being devised by Sarah B. Preston, dec'd, to her three sons, William C. Preston, John S. Preston, and Thomas L. Preston and wife, intending and hereby conveying to the said Connally F. Trigg, as well that interest in the said Salt Works estate and lands which was sold and conveyed to the said Thomas L. Preston by the said John S. Preston, as that which the said Thomas L. Preston has acquired by virtue of the devise aforesaid, contained in the will of his mother, Sarah B. Preston deceased, with all their appurtenances, to have and to hold the said interest in the said Salt Works estate and lands, with the appurtenances, to the said Connally F. Trigg and his heirs, to the sole use and behoof of the said Connally F. Trigg and his heirs, and the said Thomas L. Preston, for himself and his heirs, the said interest in the said Salt Works

estate and lands, with their appurtenances, to the said Connally F. Trigg and his heirs, against the claim of them, the said Thomas L. Preston & wife, and their heirs, and all other persons whomsoever, shall and will by these presents warrant and forever defend; in trust, nevertheless, that if the said Thomas L. Preston, his heirs, execu-
36 tors, or administrators, do and shall well and truly pay or cause to be paid to the said John S. Preston, his heirs or assigns, the said sum of fifty thousand dollars, on or before the 1st day of January, 1860, and shall annually, from and after the 1st day of January, 1848, pay to the said John S. Preston the interest which may accrue on the said sum of fifty thousand dollars, according to the terms and provisions of the agreement hereinabove recited, together with the expense of drawding and recording this indenture, then and in that case this indenture, and everything herein contained, shall become void and of no effect.

But if the said Thomas L. Preston, his heirs, executors, or administrators, shall fail to pay the said sum of money and the interest which may be then due thereon on or before the said 1st day of January, 1860, or if the said Thomas L. Preston, his heirs, executors, or administrators, shall fail to pay or cause to be paid to the said John S. Preston, his heirs or assigns, annually, from and after the 1st day of January, 1848, to wit, on the 1st day of January, 1849, and on the 1st day of January in each succeeding year, the interest which may accrue upon the said sum of fifty thousand dollars, in current bankable funds of the State of Virginia, at the town of Abingdon, and shall continue in such default for the space of ninety days after the said interest shall fall due in any year after, it shall be lawful for the said Connally F. Trigg, and
37 full power and authority is hereby given him, to proceed to sell the said interest in the said Salt Works estate and lands herein conveyed by the said Thomas L. Preston and wife, with all their appurtenances, so soon after the 1st day of January, 1860, or so soon after the experation of the said ninety days from the 1st day of January in any year on which the annual interest shall be payable according to the terms of the agreement aforesaid herein recited, and shall not be so paid, as he may be requested by the said John S. Preston, his heirs or assigns, at public auction, for ready money, to the highest bidder, at the front door of the court-house of the county of Washington, having previously advertised the time and place of sale at least ninety days, by putting up an advertisement for that purpose and for the space of time at the front door of the court-house of Washington and Smyth Counties, and publishment the same in one or more newspapers printed at Abingdon or Richmond for at least eight weeks; and the proceeds of such sale, after paying thereout all the expenses attending the execution of this trust, including a commission of two & a half per cent. on the amount of sale to the said Connally F. Trigg, trustee, for his trouble in executing the same, shall be applied by the said Connally F. Trigg towards the discharge and payment to the said John S. Preston, his heirs or assigns, of the aforesaid sum of fifty thousand dollars, with
38 whatever interest may be due thereon, or so much of the said sum, with interest, as may remain unpaid. And in further trust, that until such sale shall be made it shall be lawful for the said Thomas L. Preston and his heirs to hold, occupy, and enjoy the said *the said* interest in the said Salt Works estate and lands, with their appurtenances, and to take and receive the rents, issues, and profits thereof to his own proper use and benefit; and also that the said Thomas L. Preston, his heirs, executors, or adminis rators, will pay and discharge

all taxes, impositions, assessments, and other charges whatever which now is or which may or shall become chargeable thereon during his or their possession thereof. And the said Connally F. Trigg doth covenant on his part that he will faithfully execute the trust hereby reposed in him.

In testimony whereof the parties hereunto have to these presents set their hands and affixed their seals the day and year first in this indenture written.

The word "land," in the 15th line, and "may," in the 24th line of the 3rd page*d*, *e*nterlined before signing.

Signed, sealed, and acknowledged in presence of—

THOMAS L. PRESTON. [SEAL.]
ANNA M. S. PRESTON. [SEAL.]
CONNALLY F. TRIGG. [SEAL.]

39 WASHINGTON COUNTY, *to wit:*

We, John M. Preston and Elias Odgen, justices of the peace in the county aforesaid, in the State of Virginia, do hereby certify that Thomas L. Preston and Connally F. Trigg, parties to a certain deed bearing date on the 30th day of August, 1847, and hereto annexed, personally appeared before us in our county aforesaid and acknowledged the same to be their act and deed, and desired us to certify the said acknowledgment to the clerk of the county court of Smyth, in order that the said deed may be recorded. Given under our hands and seals this 30th day of August, 1847.

JOHN M. PRESTON. [SEAL.]
ELIAS ODGEN. [SEAL.]

WASHINGTON COUNTY, *to wit:*

We, John M. Preston and Elias Odgen, justices of the peace in the county aforesaid, in the State of Virginia, do hereby certify that Anna M. S. Preston, the wife of Thomas L. Preston, parties to a certain deed bearing date on the 30th day of August, 1847, and hereunto annexed, personally appeared before us in our county aforesaid, and being examined by us privily and apart from her husband, having the aforesaid fully explained to her, she, the said Anna *Anna* M. S. Preston, acknowledged the same to be her act and deed, and declared that she had
40 willingly signed, sealed, and delivered the *the* same, and that she wished not to retract it. Given under our hands and seals this 30th day of August, 1847.

JOHN M. PRESTON. [SEAL.]
ELIAS ODGEN. [SEAL.]

VIRGINIA.—In the clerk's office of Smyth County court, October the 4th, 1847.

The foregoing deed of trust from Thomas L. Preston & Anna M. S., his wife, to Connally F. Trigg, to secure John S. Preston, was presented in the office aforesaid the above date, and, with the certificates of acknowledgment and privy examination annexed, admitted to be recorded.

Teste: JAMES F. PENDLETON, *C. C.*
A copy. Teste: W. C. SEXTON, *D. C.*

Exhibit "E," referred to in the foregoing bill, is in the words and figures following, to wit:

Know all men by these presents that I, W'm C. Preston, of the town of Columbia and State of South Carolina, in consideration and in execution of an agreement entered into on the ninth day of December,
41 1847, between me & Thomas L. Preston, of Virginia, and of his exec'tion of bonds to me for the sum of twenty-five thousand dollars, payable as will appear thereby, which bonds are to be secured by a deed of trust on the Salt Works, have granted, bargained, sold, and released, and by these presents do grant, bargain, sell, and release, unto the said Thomas L. Preston all the real estate devised to me by the will of the late Sarah B. Preston, and all my right, claim, or interest thereon, with all the rights and appurtenances to the said real estate belonging, to have & to hold the said real estate unto the said Thomas L. Preston, his heirs and assigns, forever, in fee-simple, hereby warranting the same, as witness my hand & seal this 25th day of April, in the year of our Lord 1848.

[SEAL.] WM C. PRESTON.

Witness:
T. H. JOHNSON.
T. E. WANNAMAKER.
J. E. GLENN.

STATE OF SOUTH CAROLINA,
Richland District:

I, James S. Guignard, clerk of the court and magistrate ex officio, do hereby certify unto all whom it may concern that Louisa Penelope Preston, wife of the within-named W'm C. Preston, did this day appear before me, and upon being privately and seperately examined by me did declair that she does, freely and voluntarily, and without any
42 compulsion, dread, or fear of any person or persons whomsoever, renounce, release, and forever relinquish unto the within-named Thos. L. Preston, his heirs and assigns, all her interest and all her right and claim of dower of, in, or to all and singular the premises within mentioned and released.

Given under my hand and seal this 25th day of April, 1848.

LOUISA P. PRESTON. [SEAL.]
JAMES S. GUIGNARD, [L. S.]
Clerk of Court.

THE STATE OF SOUTH CAROLINA,
Richland District:

Before me, James S. Guignard, clerk of the court of common pleas in and for the district aforesaid, personally came and appeared the Hon. William C. Preston and acknowledged that he did sign, seal, and execute the foregoing conveyance for the uses and purposes therein mentioned, and that he execute' the same in the presence of T. H. Johnson, T. E. Wannake, and *and* J. E. Glenn, who witnesseth the due execution thereof, acknowledged before me this 21 day of July, 1848.

WM. C. PRESTON.
JAMES GUIGNARD,
Clerk of Court.

I, J. S. Richardson, one of the aforesaid judges of the State aforesaid and presiding judge of the court of common pleas in the State of
43 South Carolina, do hereby certify that the above-subscribing

James Guignard is clerk of the aforesaid court; that all due faith and credit is and ought to be given to his signature as such, and that his signature is genuine.

JAMES S. RICHARDSON.

VIRGINIA.—At a court held for Smyth County, the 19th day of December, 1848.

The foregoing deed, from W'm C. Preston & Louisa P., his wife, to Thomas L. Preston, was presented in court, and, with the several certificates annexed, ordered to be recorded.

Teste:

W'M B. MORGAN, *D. C.*

A copy. Teste:

W'M C. SEXTON, *D. C.*

Exhibit F, referred to in the foregoing bill, is in the words and figures following, to wit:

This indenture, made the 7th day of January, in the year of our Lord one thousand eight hundred and fifty, between Thomas L. Preston and Anna M. S. Preston, his wife, of the county of Washington and State of Virginia, of the one part, and Connally F. Trigg, of the same county and State, of the other part, witnesseth that whereas the said
44 Thomas L. Preston and William C. Preston, on the 9th day of December, 1847, made an agreement and contract *in* writing by which the W'm C. Preston agreed to sell, convey, and transfer to Tho's L. Preston, by sufficient deeds, conveyances, and assurances, all his interest, whether in real or personal property or choses in action which may be desired to him under or by virtue of the late will of the late Sarah B. Preston, their mother, or by any devise, bequest, or legacy, reversionary or otherwise therein contained, except the two slaves, Isaac and Alphred, and whereas the said Thomas L. Preston, by the contract aforesaid, agreed on his part, to pay to the said W'm C. Preston the sum of twenty-five thousand dollars, in the following way, the debt to bear interest from the 1st January, 1848, the interest to be paid annually; that is, the first year's interest on the first of January, 1849; the principle to be paid on the 1st Jan'y, 1858; and whereas the said Thomas also agreed to execute his bonds for the payments aforesaid, secured by mortgage on the Salt Works. And so the said Thomas L. Preston being indebted to the said W'm C. Preston in the sum of twenty-five thousand dollars, to be paid to the said W'm C. Preston on or before the 1st day of January, 1858, with interest thereon from and after the 1st day of January, 1848, which said interest is to be paid annually as above stated.

45 And the said Thomas being willing and desirous, as well to comply with the terms of the written agreement above stated as to assure to secure to the said W'm C. Preston the payment of *of* the said sum of twenty-five thousand dollars, with the interest thereon, as above stated, and also receive the payment of the said interest annually as aforesaid, this indenture, therefore, witnesseth that the said Thomas L. Preston and Ann M. S., his wife, as well in consideration of the premises as the further sum of one dollar to them in hand paid by the said Connally F. Trigg, the receipt whereof is hereby acknowledged, have granted, bargained, and sold, and by these presents do grant, bargain, and sell and convey unto the said Connally F. Trigg all the right, title, and int'rest which they have or may be entitled to in the Salt

Works estate, and the lands and fixtures thereto appurtenant, as devised by Sarah B. Preston, dec'd, to her three sons, W'm C. Preston, John S. Preston, and the said Thomas L. Preston. The said Thomas L. Preston & wife intending and hereby conveying to the said Connally F. Trigg, as well that in the said Salt Works estate and lands which he, the said Thomas, acquired by virtue of the devise aforesaid, contained in the last will of his said mother, Sarah B. Preston, dec'd, as the int'rest in the same which he has acquired by purchase from his brother,
46 W'm C. Preston, and John S. Preston, both of which have been heretofore conveyed to him. The said Salt Works estate lying in the county of Smythe, and the lands aforesaid devised therewith lying in Smyth and Washington Counties.

To have and to hold the said Salt Works estate and lands, with the appurtenances, to said Connally F. Trigg and his heirs, to the sole use and behoof of the said Trigg and his heirs forever. And the said Thomas L. Preston, for himself and his heirs, doth covenant with the said Connally F. Trigg and his heirs that he, the said Thomas L. Preston and his heirs, the said Salt Works estate and lands, with their appurtenances, to the said Connally F. Trigg and his heirs against the claim of them, the said Thomas L. Preston & wife, and their heirs, and all other persons whomsoever, shall and will, by these presents, warrant and forever defend. In trust never'less that if the said Thomas L. Preston, his heirs, executors, or administrators, do and shall well and truly pay, or cause to be paid, to the said W'm C. Preston, his heirs or assigns, the said sum of twenty-five thousand dollars, on or before the 1st day of January, 1858, and shall annually from and after the 1st day of January, 1848, pay to the said W'm C. Preston the int'rest which may accrue on the said sum of twenty-five thousand dollars, according to the terms of the agreement hereinbefore recited,
47 together with the expense of drawing and recording this indenture, then and in that case this indenture and everything herein contained shall become void and of no effect.

But if the said Thomas L. Preston, his heirs, executors, or administrators, shall fail to pay the said sum of money and the int'rest which may be then due thereon on or before the said 1st day of January, 1858, or shall fail to pay or cause to be paid to the W'm C. Preston annually, from and after the 1st day of January, 1848, the interest which may accrue upon the said sum of twenty-five thousand dollars, and shall continue in such default in payment of said int'rest for the space of ninety days after the same shall fall due in any year, then it shall be lawful for the said Connally F. Trigg, and full power and authority is hereby given him, to *to* proceed to sell the said Salt Works estate and lands herein conveyed by the said Thomas L. Preston, with all their appurtenances, as soon after the 1st day of January, 1858, or as soon after the expiration of the said ninety days from the 1st day of January in any year on which the annual int'rest shall be payable, and shall not be so paid, as he may be requested by the said W'm C. Preston, his heirs or assigns, at public auction, for ready money, to the highest bidder, at the front door of the court-house of Washington County, having previously advertised the time and place of sale, at least ninety days, by putting up an advertisement for that purpose, and for that space
48 of time at the front door of the court-house of Washington and Smyth Counties, and publishing the same in one or more newspapers printed at Abingdon or Richmond for at least eight weeks. And the proceeds of such sale, after paying the rent, all the expences attending the execution of this trust, including a commission of two and a hal

per centum on the amount of sale, to the said Connally F. Trigg, trustee, for his trouble in executing the same, shall be applied by the said Trigg towards the discharge and payment to the said W'm C. Preston, his heirs or assigns, of the afor'said sum of twenty-five thousand dollars, with whatever int'rest may be due thereon, or so much of the said sum, with int'rest, as may rema'n unpaid. And in further trust that until such sale shall be made it shall be lawful for the said Thomas L. Preston and his heirs to hold, occupy, and enjoy the said Salt Works estate and lands, with their appurtenances, and to take and receive the rents, issues, and profits thereof to his own proper use and benefit, and also that the said Thomas L. Preston, his heirs, executors, or administrators, will pay and discharge all taxes, impositions, assessments, and other charges whatever which now are or which may or shall become chargeable ther'on during his or their possession thereof. And the said Con'ally F. Trigg doth covenant on his part that he will
49 faithfully execute the trust hereby resposed in him.

In testimony where'f the parties hereunto have to these presents set their hands and affixed their seals the day and year first in this indenture above written.

THO. L. PRESTON. [SEAL.]
ANN M. S. PRESTON. [SEAL.]
CON'ALLY F. TRIGG. [SEAL.]

WASHINGTON COUNTY, *to wit:*

We, Elias Odgen and W'm Y. C. White, justices of the peace in the county aforesaid, in the State of Virginia, do hereby certify that Thomas L. Preston & Con'ally F. Trigg, parties to a certain deed bearing date on the 7th day of January, 1850, and hereto annexed, personally appeared before us, in our own county aforesaid, and acknowledged the same to be their act and deed, and desired us to certify the said acknowledgment to the clerk of the county court of Smyth County, in order that the said deed may be recorded.

Given under our hands and seals this the 7th day of January, 1850.

ELIAS ODGEN. [SEAL.]
W'M Y. C. WHITE. [SEAL]

STATE OF VIRGINIA,
County of Washington, to wit:

50 We, Daniel Trigg and Isaac B. Dunn, justices of the peace for the county of Washington, in the State of Virginia, do certify that Anna M. S. Preston, the wife of Thomas L. Preston, whose names are signed to the writing hereto annexed, bearing date on the 7th day of January, 1850, personally appeared before us, in the county aforesaid, and being examined by us privily and apart from her husband, and having the writing aforesaid fully explained to her, she, the said Anna M. S. Preston, acknowledged the said writing to be her act and declar'd that she had willingly executed the same, and does not wish to retract it.

Given under our hands this 13th day of August, 1851.

D. TRIGG, *J. P.*
ISAAC B. DUNN, *J. P.*

This deed of trust from Thomas L. Preston & Ann M. S. Preston, his wife, to Con'ally F. Trigg, to secure W'm C. Preston, was presented in court the 16th day of September, 1851, with the certificates of acknowl-

edgment and privy examination annexed, and the endorsements of James W. Sheffey thereon, and ordered to be recorded.

Teste:

JAMES F. PENDLETON, *C.*

A copy. Teste:

W. C. SEXTON, *D. C.*

51 [The copy of the order of court substituting Arthur C. Cummings as trustee for Connally T. Trigg, referred to in the foregoing bill as filed with said bill, is missing from the record in this cause.

SAM'L PATTERSON, *Clerk.*]

Exhibit J, referred to in the foregoing bill, is in the words and figures following, to wit:

This deed, made this seventh day of July, in the year 1859, between Thomas L. Preston and Anna M., his wife, of the first part, and Robert Gibboney, of the second part, witnesseth, that the said parties of the first part do transfer, assign, and *and* grant unto the party of the second part all that tract or parcel of land lying in the county of Smyth, on the waters of the North Fork of Holston, and commonly known as the Preston Salt Works estate, with all the appurtenances and appendages thereto belonging, and containing six thousand nine hundred and ninety-five acres, be the same more or less; all their right, title, claim, and interest at law as well as in equity in and to the tract of land lying in the county of Washington adjoining the first-mentioned tract, and commonly known as the King Salt Works estate, with all the appendages and appurtenances thereto belonging, and containing five
52 thousand two hundred and fifty-six acres, be the same more or less; a certain parcel of land lying in the county of Smyth, on the waters of Cove Creek, and containing four hundred and eighty-eight and a half acres; a certain tract or parcel of land lying in the county of Washington, one mile north of Abingdon, adjoining the lands of William Y. C. White and the lands of the heirs of James L. White, deceased, and containing about two hundred and fifty acres; a certain tract or parcel of land lying two and a half miles east of Abingdon, on the main road, adjoining the lands of Joseph Haskew and John H. Coleman, and containing eight hundred and fifty-six acres; a tract or parcel of land lying in the county of Washington, on the south side of Tumbling Creek, and containing four hundred and seventy acres; the lot of land, containing nine and a half acres, lying immediately adjoining the town of Abingdon, on which is situated the dwelling-house now occupied by the parties of the first part, together with the lots of ground used in connection therewith, as well in the town of Abingdon as those outside the limits of the corporation, consisting of the stable-lot adjoining the lands of John M. Preston, and bounded on the south by
53 the line of the Virginia & Tennessee Railroad Company, and the lot of ground on the north side of the turnpike, immediately opposite the enclosure on which stands the dwelling-house of the parties of the first part above refer'ed to; the lot of ground adjoining the lot of D'r H. M. Grant, and containing about one-fourth of an acre; a tract of land lying on the main road, west of Abingdon, adjoining the lands of John G. Meem, Theophilus P. Clapp, and the lands of the estate of David Campbell, deceased, comprised of grants from sundry parties, and containing some fifty or sixty acres, be the same more or less; the lots of ground contig'ous to the depot of the Virginia and Tennessee Railroad,

per centum on the amount of sale, to the said Connally F. Trigg, trustee, for his trouble in executing the same, shall be applied by the said Trigg towards the discharge and payment to the said W'm C. Preston, his heirs or assigns, of the afor'said sum of twenty-five thousand dollars, with whatever int'rest may be due thereon, or so much of the said sum, with int'rest, as may rema'n unpaid. And in further trust that until such sale shall be made it shall be lawful for the said Thomas L. Preston and his heirs to hold, occupy, and enjoy the said Salt Works estate and lands, with their appurtenances, and to take and receive the rents, issues, and profits thereof to his own proper use and benefit, and also that the said Thomas L. Preston, his heirs, executors, or administrators, will pay and discharge all taxes, impositions, assessments, and other charges whatever which now are or which may or shall become chargeable ther'on during his or their possession thereof. And the said Con'ally F. Trigg doth covenant on his part that he will
49 faithfully execute the trust hereby resposed in him.

In testimony where'f the parties hereunto have to these presents set their hands and affixed their seals the day and year first in this indenture above written.

THO. L. PRESTON. [SEAL.]
ANN M. S. PRESTON. [SEAL.]
CON'ALLY F. TRIGG. [SEAL.]

WASHINGTON COUNTY, *to wit:*

We, Elias Odgen and W'm Y. C. White, justices of the peace in the county aforesaid, in the State of Virginia, do hereby certify that Thomas L. Preston & Con'ally F. Trigg, parties to a certain deed bearing date on the 7th day of January, 1850, and hereto annexed, personally appeared before us, in our own county aforesaid, and acknowledged the same to be their act and deed, and desired us to certify the said acknowledgment to the clerk of the county court of Smyth County, in order that the said deed may be recorded.

Given under our hands and seals this the 7th day of January, 1850.

ELIAS ODGEN. [SEAL.]
W'M Y. C. WHITE. [SEAL.]

STATE OF VIRGINIA,
County of Washington, to wit:

50 We, Daniel Trigg and Isaac B. Dunn, justices of the peace for the county of Washington, in the State of Virginia, do certify that Anna M. S. Preston, the wife of Thomas L. Preston, whose names are signed to the writing hereto annexed, bearing date on the 7th day of January, 1850, personally appeared before us, in the county aforesaid, and being examined by us privily and apart from her husband, and having the writing aforesaid fully explained to her, she, the said Anna M. S. Preston, acknowledged the said writing to be her act and declar'd that she had willingly executed the same, and does not wish to retract it.

Given under our hands this 13th day of August, 1851.

D. TRIGG, *J. P.*
ISAAC B. DUNN, *J. P.*

This deed of trust from Thomas L. Preston & Ann M. S. Preston, his wife, to Con'ally F. Trigg, to secure W'm C. Preston, was presented in court the 16th day of September, 1851, with the certificates of acknowl-

edgment and privy examination annexed, and the endorsements of James W. Sheffey thereon, and ordered to be recorded.

Teste:

JAMES F. PENDLETON, *C.*

A copy. Teste:

W. C. SEXTON, *D. C.*

51 [The copy of the order of court substituting Arthur C. Cummings as trustee for Connally T. Trigg, referred to in the foregoing bill as filed with said bill, is missing from the record in this cause.

SAM'L PATTERSON, *Clerk.*]

Exhibit J, referred to in the foregoing bill, is in the words and figures following, to wit:

This deed, made this seventh day of July, in the year 1859, between Thomas L. Preston and Anna M., his wife, of the first part, and Robert Gibboney, of the second part, witnesseth, that the said parties of the first part do transfer, assign, and *and* grant unto the party of the second part all that tract or parcel of land lying in the county of Smyth, on the waters of the North Fork of Holston, and commonly known as the Preston Salt Works estate, with all the appurtenances and appendages thereto belonging, and containing six thousand nine hundred and ninety-five acres, be the same more or less; all their right, title, claim, and interest at law as well as in equity in and to the tract of land lying in the county of Washington adjoining the first-mentioned tract, and commonly known as the King Salt Works estate, with all the appendages and appurtenances thereto belonging, and containing five
52 thousand two hundred and fifty-six acres, be the same more or less; a certain parcel of land lying in the county of Smyth, on the waters of Cove Creek, and containing four hundred and eighty-eight and a half acres; a certain tract or parcel of land lying in the county of Washington, one mile north of Abingdon, adjoining the lands of William Y. C. White and the lands of the heirs of James L. White, deceased, and containing about two hundred and fifty acres; a certain tract or parcel of land lying two and a half miles east of Abingdon, on the main road, adjoining the lands of Joseph Haskew and John H. Coleman, and containing eight hundred and fifty-six acres; a tract or parcel of land lying in the county of Washington, on the south side of Tumbling Creek, and containing four hundred and seventy acres; the lot of land, containing nine and a half acres, lying immediately adjoining the town of Abingdon, on which is situated the dwelling-house now occupied by the parties of the first part, together with the lots of ground used in connection therewith, as well in the town of Abingdon as those outside the limits of the corporation, consisting of the stable-lot adjoining the lands of John M. Preston, and bounded on the south by
53 the line of the Virginia & Tennessee Railroad Company, and the lot of ground on the north side of the turnpike, immediately opposite the enclosure on which stands the dwelling-house of the parties of the first part above refer'ed to; the lot of ground adjoining the lot of D'r H. M. Grant, and containing about one-fourth of an acre; a tract of land lying on the main road, west of Abingdon, adjoining the lands of John G. Meem, Theophilus P. Clapp, and the lands of the estate of David Campbell, deceased, comprised of grants from sundry parties, and containing some fifty or sixty acres, be the same more or less; the lots of ground contig'ous to the depot of the Virginia and Tennessee Railroad,

one-half mile west of the town of Abingdon; a certain tract of land lying northwest of the town of Abingdon, and bounded by the lands of the heirs of James L. White, deceased; a certain tract of land lying in the county of Rawleigh, on the waters of Cole River, and containing eight hundred acres.

Also, the following personal property: The slaves John Russell, Mineiva and child, Henry, Susan, Col. Bonaparte, Seaton, Mahala, Phœbe, Nancy, Francis Barnett, Marg'ret, Colonel, Virginia Missouri, Armstead, Amy, James, Sally Ann, Auther, Francis Harrison, Milley and child, Lewis, Henry Spott, Louisa, Pocahontas, Reuben, Creasy, Fanny, Tom Collins, Victoria, Patience, John Collins, Mary Marg'ret, Philip,
54 Delphy, Matilda, Stephen, Kiah, James Wallace, Flora Harriet, Cyrus, Orville, Andy, Mary, Marg'ret, Robert, Creasy, Barnett, Daniel, Jim Scott, Daniel Washington, Edward Calvin, Betty, Sam, Sam Shoemaker, Edward James Henry, James Regan, Sally, old Phœby, old Stephen, old Henry, old Lewis, old Willis, old Allen, old Milley, old Judy; all the household and kitchen furniture in the dwelling at Abingdon, as well as upon the plantations already described in this deed, consisting of the beds, bedsteads, and bedding, carpets, matting, sofas, chairs, tables, ottomans, bureaus, wardrob's, mirrors, sideboards, cutlery, delf, china and crockery ware, silver and plated ware, comprised in part of pitchers, goblets, tureen, cream-pot, waiters, knives and forks, waiters, candlesticks, mantle ornaments, and other articles in that line; piano, melodian, guitar, music and music stands, piano cover and stool, pictures, engravings, maps, globes, stationary, busts, a large library of books and pamphlets, library furniture, carriages, carts, and wagons, harness and gearing, saddles and bridles, farm and garden implements and utensils, grain, and all supplies now on hand, sixteen milch-cows and ten calves, twelve mules and four horses, six mares, six colts, ten yearlings, a stock of hogs.

A claim on A. McCall, surviving partner of the firm of W'm
55 King & Co., now pending in the court of appeals in Lewisburg, subject, however, to an assignment made the 6th day of July, 1859, of the said claim to Robert Gibboney for the purpose of indemnifying V. S. Morgan, deputy and sheriff of the county of Smyth, for a more detailed statement and more perfect understanding of which reference is hereby made to the said agreement now of record in the clerk's office of the county court of Washington County.

Debts on A. H. Campbell, of the county of Smyth, of about six thousand dollars, secured by liens on his real estate in the said county of Smyth, subject, however, to the reservation and *and* exceptions made immediately in favor of V. S. Morgan, deputy sheriff and sheriff of the said county of Smythe.

Ten thousand dollars in the stock of the Virginia and Tennessee Railroad Company, now pawned to E. C. Langhorn for a debt due said Langhorn; a deed of trust executed by Charles C. Campbell, and of record in the county of Smyth, to , trustee, to secure the said Thomas L. Preston in certain debts therein mentioned. References is made to the said deed for a more full and perfect understanding of its contents. A deed of trust executed by John B. Floyd to Beverly R. Johnston to secure certain debts therein mentioned to Thomas L.
56 Preston, and of record in the clerk's office of the county court of Washington County. A deed of trust executed by George R. C. Floyd to Thomas A. Gillaspie to secure Thomas L. Preston in certain debts therein mentioned, and indemnify the said Preston against loss as the surety of the said Floyd, reference being made to the said deed

for a more perfect understanding of its provisions. The said deed is of record in the clerk's office of the county court of Tazewell, and in the county of *Lauvins* and State of Kentucky, a portion of the real estate conveyed in said deed lying and being in the State of Kentucky, and commonly known as the Warfield estate.

All the right, title, claim, and interest which the said Thomas L. Preston has in and to a certain lease made by the said Preston to *to* Thomas Spencer, Hamilton White, Harman Ackerman, and George W. Palmer, dated 11th October, 1858, including the salt, mules, and property of every description, to be returned by the said lessees at the expiration of the said lease, subject, however, to assignments made by the said Preston to Robert Gibboney, as trustee, to secure Arthur C. Cumnings, commissioner of the circuit court of Washington County, and V. S. Morgan, deputy sheriff and sheriff of Smyth County, which said assignments are dated July 6th, 1859, and of record in the clerk's office of the county court of Washington County.

57 It is the express intention and desire of the parties of the first part to convey to the party of the second part all their real and personal estate of every description wherever situate, and if, through inadvertancy or mistake, anything may have been omitted in the foregoing enumeration or description of property, the same is hereby as fully and absolutely conveyed to the party of the second part as if it had been specifically mentioned, all debts and choses in action which it is impossible to specify, as many are in the hands of agents; the names of the obligors and the amounts the parties of the first part cannot now here more particularly designate:

In trust, to secure the said creditors and to indemnify the sureties of the said Thomas L. Preston in the manner and form and with the priorities hereinafter set*t* forth and provided in this deed:

1st. To sell either at public or private sale, and upon such terms as, in the opinion of the party of the second part, will best promote the objects expressed in this deed and convey the same, the said Preston's Salt Works estate, and from the proceed' of sale to pay, satisfy, and discharge the following encumberances and liens now resting upon the said estate:

58 John S. Preston, about one hundred and ten thousand dollars; William C. Preston, about twenty-five thousand dollars; M'r's Sally B. Floyd, about twelve thousand dollars; the estate of Gov'r James McDowell, deceased, about thirteen thousand dollars; M'r's Sally P. Miller, about three thousand five hundred dollars; Wade Hampton, about twelve thousand dollars; Philip S't George Cocke, about fifty thousand dollars.

Secondly. After the payment and satisfaction of the said encumberances above recited, upon the said Preston Salt Works estate, it is expressly understood between the parties to this deed that, and in consideration of the relinquishment of the right to dower in the real estate hereby conveyed by Anna M. Preston, the sum of twenty-five thousand dollars is to be raised and set apart out the surplus remaining in the hands of the party of the second part after payment of the said encumberances upon the said Preston Salt Works estate, and from the residue of the real estate hereby conveyed and paid over by the party of the second part to Peter Saunders, the brother of the said Anna M. Preston, who is hereby appointed trustee for that purpose, for the sole use and benefit of the said Anna M., untram'elled by the obligations, and free from the control of her husband, the said Thomas L. Preston,

59 neither liable for any debts the said Thomas L. may now owe or hereafter contract.

Thirdly. To sell either at public or private sale the real and personal estate hereby conveyed upon such terms with the reservations and exceptions hereinbefore made as in the opinion of the party of the second part may best promote the objects set forth in this deed and convey the same, and, after payment of the sums mentioned in the first and second clauses of this deed, and after discharging such debts as may now operate as *lein*s, either by judgments or otherwise thereon, the said party of the second part shall pay to the Southwestern Bank of Virginia, at Wytheville, a debt due by negoti*on*able note of about five thousand three hundred dollars, which said note is endorsed by V. S. Morgan and P. C. Buchanan. To the Citizens' Saving Bank at Lynchburg, a debt due by negotiable note of about three thousand six hundred forty-seven twenty-three hundred dollars, which said note is endorsed by Wyndham Robertson. To the Farmers' Bank at Wytheville, a debt due by negotiable note of about three thousand dollars, which said note is endorsed by W'm King Heiskell and Connally F. Litchfield. A debt due to the Farmers' Bank at Fincastle by negotiable note of about five thousand two hun-

60 dred and fifty dollars, which said note is endorsed by W'm King Heisk*le*, Connally F. Litchfield, and Thomas H. Gillaspie. To the Bank of the Valley at Christiansburg, a debt due by negotiable note of about three thousand three hundred dollars, which said note is endorsed by James F. Preston, W'm King Heisk*le*, and Connally F. Litchfield. A debt due to the Northwestern Bank of Virginia, at Jeffersonville, by negotiable note of about five thousand dollars, which said note is endorsed by John W. Johnston. To the Exchange Bank at Abingdon, two debts due by negotiable notes, amounting together to about the sum of thirteen hundred and fifty dollars, which said two notes are endorsed by B. K. Buchanan. A debt due to the executors of Fleming Sanders, of seven thousand two hundred and thirty-six dollars thirty-three cents, by bond dated July 6th, 1859, said debt being money paid by them as securities of said Thomas L. Preston. A debt due Mrs. Mary Saunders of three hundred dollars, by bond dated January 12th, 1858, to which Peter Saunders, j'r, is security. A debt due John J. Saunders of three hundred dollars, by bond dated 12th January, 1858, to which Peter Saunders is security. A debt due Edward Watts, by covenant dated 17th March, 1857, of dol-

61 lars, for which William G. Peck is security. A debt due by note to Robert Gibboney, receiver, two thousand seven hundred fifty dollars, dated 1st day of May, 1857, to which note Alexander Findlay and Ben. K. Buchanan are securities. A debt due James F. Preston, by bond dated 5th July, 1859, one hundred & ninety-nine dollars sixty-eight cents, being money paid by him as security for said Thomas L. Preston. Two debts due Spotts, Harvey & Co., by negotiable notes, amounting together to fourteen hundred & four dollars and forty-one cents, which said notes are endorsed by Henry C. Gibbons. A debt due the Exchange Bank at Abingdon by negotiable note of about three thousand three hundred dollars, which said note is endorsed by Adam Hickman and W'm King Heisk*le*. A debt due by negotiable note to the Northwestern Bank of Virginia, at Jeffersonville, which said note stands in the name of Ben. K. Buchanan, but the proceeds of which were received by Thomas L. Preston for about sixteen hundred and twenty-eight dollars, and which note was in fact the note of the said Thomas L. Preston. A debt due by negotiable note now held by Ed-

ward C. Langhorn, payable at one of the banks at Lynchburg, which note is endorsed by V. S. Morgan for about two thousand dollars.

In the event the proceeds in the hands of the party of the second part, after payment of the encumberances on the real estate pro-
62 vided for in the first clause, and the payment to Peter Saunders, j'r, trustee, for the benefit of Mrs. Anna M. Preston, provided for in the second foregoing clause, shall not be sufficient to pay and discharge all the debts secured in the third clause, then the party of the second part is to pay and discharge the debts enumerated in the said third clause pro rata.

Fourthly. After payment of the foregoing enumerated and specified leins and debts, with the reservations and exceptions herein-before made, to pay: A debt due to Richard T. Davis by bond dated the day of , 18 , of about seven thousand dollars. A debt due John C. Greenway, due by bond and open account, of about five thousand dollars. A debt due Thomas P. McDowell, by bond, dated the day of 185 , of about two thousand three hundred dollars. A debt due by negotiable note to A. H. Dorr, of two thousand six hundred and fifty dollars. A debt due by bond, dated Nov'r 8th, 1858, to Peter Saunders, for the sum of eleven hundred & fifty-nine dollars. A debt due to Fleming Saunders, by bond dated January 1st, 1858, for the sum of seven hundred & fifteen dollars. A debt due Edward Watts, by bond dated 6th day of January, 1859, for the sum of four hundred and seven-two $\frac{52}{100}$ dollars, subject to a credit of one thousand and
63 seventy $\frac{95}{100}$ dollars, of January 8th, 1859. A debt due to James M. Stone, by bond dated the day of , 185 , for thirty-eight hundred dollars, subject, however, to sundry credits. A debt due to John W. Johnston, by bond bearing even date herewith, for seven thousand dollars. A debt to the same due by two notes, dated the day of , 185 , one due the 27th July, 1859, and the other 27th July, 1860, for three thousand two hundred and seventeen $\frac{50}{100}$ dollars, each. A debt due to Chapman and Fowler by two notes, dated each 27th July, 1858, and due 27th July, 1859, and 27th day of July, 1860, for the sum of four thousand four hundred and forty dollars. A debt due to Clark, Dodge & Co. by note dated the day of , 185 , for two thousand seventeen dollars and five cents, due 26th April, 1859. A debt due to Lewis Johnston & Co., by note, dated the day of , 185 , for the sum of ten hundred and forty-eight dollars, due the 14th July, 1859. A debt due to Adam Hickman, by bond bearing date the day of , 185 , for four thousand two hundred eighteen dollars twenty-six cents. A debt due to Wyndham Robertson, by bond dated 4th day of July, 1859, for the sum of two thousand eight hundred and eight dollars thir-
ty-eight cents. A debt due W'm King Heiskle, by bond dated
64 the 21st day of January, 1859, for twelve hundred thirty-five dollars forty-four cents. A debt due to the trustees of the Abingdon Male Academy, for about three thousand dollars, for which said debt there is a reservation of the vendors' lein on the lands lying one mile west of Abingdon. A debt due to Fariman H. Preston for about ten thousand five hundred dollars, as per agreement made with Thomas P. McDowell & wife, in regard to the tract of land lying two and a half miles east of Abingdon, by which said agreement the said tract of land was conveyed to the said Thomas L. Preston, and upon which said tract of land there is a reservation of the vendors' lein in the conveyance made by the said Fariman H. Preston to the said Thomas P. McDowell. A debt due to C. T. Litchfield, by open account, for two thousand three hundred and eighteen dollars fifty-eight cents. A debt due

to John A. Campbell, by note due 6th February, 1859, for one hundred thirty-three dollars fifty-six cents. A debt due to E. M. Campbell, surviving, &c., by note due 6th February, 1859, for ninety-seven dollars ninety-eight cents. To John A. Campbell, adm'r of Daniel Trigg, deceased, by note due 6th February, 1859, for five hundred and fifty-six dollars sixty-seven cents. A debt due to Ben. K. Buchanan by open ac-
65 count, for about three thousand dollars, subject to a credit of amount of assignment made to said Buchanan 4th day of July, 1859. A debt due to Rhoda Taylor, by note dated the day of , 18 , for about three hundred dollars. A debt due to Worley Musslewhite, by note dated the of , 18 , for about four hundred dollars. A debt due to S. W. White, by note dated the of , 18 , for about one hundred sixty-two dollars twenty-three cents. A debt due to Thomas C. Gardner, by note dated the day of , 185 , for about four hundred and fifty dollars. A debt due R. A. Reid, by note dated the day of , 18 , for about eleven hundred sixty-seven dollars eighty-two cents. A debt due to James C. Hayton, by note dated the , day of , 18 , for about two hundred and two dollars ninety-seven cents. A debt due to Dr. Robert Thurman, by note dated the day of , 18 , for about five hundred and thirty-eight dollars eight cents. A debt due to P. B. Snapp, by note dated the day of , 18 , for about two hundred and fifty-six dollars seventy-three cents. A debt due to L. H. Tate, by note dated the of , 18 , for about six hundred and eight dollars thirteen cents. A debt due to David Graham, by note dated the of , 18 , for about two hundred and thirty dollars seventy cents. A debt due to Alexander Find-
66 ly, by open account for about twelve hundred dollars. A debt due to Gardner Carson & Co., by open account, for about two hundred eighty-eight dollars seventy cents. A debt due to Hopkins, Hardin & Kemp, by open account, for about two hundred and forty-two dollars. A debt due to Thompson & Co., by note dated the of , 18 , for about seventy dollars. A debt due Wilson Buchanan, by open account, for about one hundred and ninety dollars. A debt due to Langhorn and Johns, by open account, for about three hundred and ten dollars. A debt due to Walter D. Blair, by open account, for about one hundred dollars. A debt due to Richardson & Co., by open account, for about fifty dollars. A debt due to W'm M. Harrison & Co., by open account, for about fifty dollars. A debt due to Musser & Co., by note, dated the day of , 18 , for about one hundred and twenty-five dollars. A debt due to John M. Preston, by negotiable note dated the of , 185 , for about five thousand dollars, upon which there are several endorsers; and in the event the said endorsers shall be held liable upon the said note, then the said debt is to be transferred and paid with the second-class creditors provided for in this deed. A debt due to George E. Neff, by note dated the of , 185 , for about one hundred and eighty-seven dollars.

67 The parties of the first hereby authorize the party of the second part to pay the rent which may become due under the contract of lease by the said Thomas L. Preston with Auther C. Cummings, commissioner of the circuit court of Washington County, out of the rent to be paid by Spencer, Ackerman & Co. under their contract of lease of the day of October, hereinbefore referred to, paramount to the claim of the said Anna M. Preston, provided for in the second clause of this deed, and any of the creditors herein provided for.

It is further agreed and understood by the parties to this deed that the said party of the second part shall, in order to the more speedy and effec-

tual carrying out the provisions of this deed, have power to sue for, settle, and collect all debts and choses in action, to employ counsel and agents necessary and proper for the due execution of this trust-deed, and pay the same out of such proceeds as may seem most proper, to collect the rents hereinbefore assigned and pay the same according to the foregoing provisions of this deed.

The said party of the second part is authorized to retain out of the trust-fund all necessary and proper expenses incurred by him in the execution of this trust, in addition to the three per cent. commis-
68 sion, to be in like manner retained as a compensation for his services.

The parties of the first part, confiding in the diligence, skill, and ability of the party of the second part, and being desirous to render the trust-fund hereby conveyed ample for the payment and satisfaction of the *lein*s, obligations, and debts herein secured with the least possible *dalay*, hereby authorize and empower the said party of the second part in the management and control of the said trust-fund to exercise a sound descretion, subject only to the provisions heretofore made. In the event the proceed' of the sale of the property hereby conveyed, after paying the encumberances and *lein*s *inumum*erated in the first clause upon the real estate, the payment provided for in the second clause to Peter Saunders, j'r, trustee for Anna M. S. Preston, and the debts to which priority is given in the third clause, shall be insufficient to pay and discharge all the debts enumerated in the fourth clause, then the said party of the second part shall out of the proceeds pay the debts enumerated in the fourth clause pro rata.

Witness the following signatures and seals this 7th (seventh) day of July, 1859, the day and year above written.

THO'S L. PRESTON. [SEAL.]
ANNA M. PRESTON. [SEAL.]
ROBERT GIBBONEY. [SEAL.]

69 VIRGINIA, *Washington County, to wit:*

I, James K. Gibson, a notary public appointed by the governor of the State of Virginia for said county and State, do certify that Anna M. Preston, wife of Thomas L. Preston, whose names are signed to the foregoing writing bearing date the 7th day of July, 1859, personally appeared before me in the county aforesaid; and, being examined by me privily and apart from her husband and having the writing aforesaid fully explained to her, she the said Anna M. Preston acknowledged the said writing to be her act, and declared that she had willingly executed the same, and does not wish to retract it.

Given under my hand this 7th day of July, 1859.

JAMES K. GIBSON,
Notary Public.

VIRGINIA.—In the clerk's office of Smyth County court. July 8th, 1859.

This deed of trust from Thomas L. Preston and Anna M., his wife, to Robert Gibboney, for the purposes therein specified, was presented in the office aforesaid, the above date, at 12 o'clock m., acknowledged by Thomas L. Preston as his act and deed, and with the certificate
70 of acknowledgment and privy examination annexed admitted to record as to them.

Teste:

W. HENRY TRUCKS, *D. C.*

VIRGINIA.—In the clerk's office of Smyth County court. January 17th, 1860.

This deed of trust from Thomas L. Preston and Anna M., his wife, to Robert Gibboney, was this day presented in the clerk's office aforesaid, the above date acknowledged by Robert Gibboney, trustee aforesaid, as his act and deed, and admitted to record as to him.

Teste:

W. HENRY TRUCKS, *D. C.*

Copy. Teste:

B. GILDERSLEEVE, J'R, *D. C.*

Exhibit K referred to in the foregoing bill is in the words and figures following, to wit:

At a court continued and held for Washington County, the 29th day of May, 1867.

THOMAS L. PRESTON
vs.
DAVID GRAHAM. } On motion.

71 Robert Gibboney, trustee in a deed of trust executed by Thomas L. Preston, bearing date on the 6th day of July, 1859, having departed this life, on the motion of said Thomas L. Preston, and it appearing to the court that service of the notice of this motion has been executed as required by law, it is ordered that James C. Campbell be, and is hereby, appointed trustee in said trust in the room of said Robert Gibboney, dec'd.

A copy. Teste:

DAVID C. CUMMINGS, *D. C.*

72 And at another day, to wit, at a circuit court of the United States continued and held for the western district of Virginia, at Lynchburg, on the 31st day of March, A. D. 1873, on the motion of the defendants, by counsel, it is ordered that sixty days be allowed the defendants to file their answer to the plaintiff's bill.

And at another day, to wit, on the third day of August, rules held in the clerk's office of said circuit court, the defendants, by their counsel, filed their answer to the plaintiff's bill which said answer is in the words and figures following, to wit:

To the honorable the circuit court of the United States for the district of Virginia and the judges thereof:

The answer of W'm Alex. Stewart and George W. Palmer to a bill of complaint exhibited against them & others by John Preston, j'r, in said court.

Demurrer.

Before answering, the said defendants demur to said bill because it is insufficient in law and equity to entitle complainant to the relief prayed for or to any relief in equity.

73 *Answer.*

But should they be held to answer further, respondents, for answer to

said bill or so much thereof as they are advised it is material for them to answer, say that it is true, as they believe, that M'r's Sarah B. Preston, by her will, devised the estate known as the Preston Salt-Works estate to her three sons, William C. Preston, John S. Preston, and Thomas L. Preston. This devise, however, is made subject to the charge of legacies to her daughters & granddaughters, amounting to eighty thousand dollars. The estate called & devised as her "Salt Works estate" is described as "embracing and including therein as well the original and principal tract, containing the wells, as all the additions subsequently acquired, and all her lands of every description, whether cleared or woodland, either adjacent to, in the vicinity of the Salt Works estate, in the counties of Smith and Washington." This devise is intended to embrace all lands lying as above on the north of the summit of Walker's Mountain, within such distance of the works as may make them convenient, useful, or advantageous appurtenances to the enjoyment of the estate, either for supplying wood or other products to the Salt Works, together with all mines, minerals, wells, furnaces, buildings, or other fixtures, plaster banks, or other appurtenances thereto whatsoever." A
74 copy of said will is exhib'ed, marked "W."

It is true that these respondents claim as purchasers, as hereinafter set forth, the entire Preston Salt Works estate thus described in the will of M'r's Sarah B. Preston. They deny the claim and pretention set up by complainant to "a part of said Salt Works estate." The compl't admits in the covenant between John S. Preston and Thomas L. Preston, of 30th August, 1847, John S. Preston being the owner, as devisee, of one-third of the Preston Salt Works estate, bargained and sold to Thomas L. Preston "all the right, title, claim, and interest which the said John S. Preston has derived or is entitled to as one of the devisees under the will of his mother, Sarah B. Preston, deceased, in the Salt Works estate in the county of Smyth, and all the lands of every description, whether clear or woodland, either adjacent to or in the vicinity of the said Salt Works estate, in the counties of Smyth & Washington, it being intended by this sale to embrace the said John S. Preston's interest—being the one-third part thereof—in the said Salt Works estate, and all the lands with their appurtenances, which were devised therewith by the said Sarah B. Preston, deceased, to her three sons, William C. Preston, John S. Preston, & Thomas L. Preston.
75 Besides "the Salt Works estate," the said John S. Preston also agrees to sell, transfer, and assign to the said Thomas L. Preston all his right, title, and interest in the estate of Sarah B. Preston, of every description, real, personal, and mixed, as residuary devisee under her will.

In the deed of trust to secure John S. Preston, exhibited with the bill executed by Thomas L. Preston & wife to Connolly F. Trigg, trustee, on the 30th of August, 1847, the same date of said covenant under which complainant claims, the will of Sarah B. Preston is fully recited, as to the devise of the Salt Works estate & the lands embraced in it. It then recites that, by a written agreement of said date, John S. Preston had bargained and sold to Thomas L. Preston, "amongst other things, all the right, title, and interest which he has in the above-named estate and lands by virtue of the above-named devise;" "and has executed to *to* the said Thomas L. Preston a deed therefor, bearing date on the 30th of August, 1847 as by the said agreement he has covenanted to do.

It further recites that, by said agreement, Thomas L. Preston had covenanted to pay to J. S. Preston fifty thousand dollars, with interest, and had agreed to execute a mortgage or deed of trust upon his entire

interest in the Salt Works estate & lands aforesaid, as well that
76 which was sold and conveyed to him by the said John S. Preston as that which he has derived in and to said estate and lands by virtue of the devise aforesaid.

Thus the deed conveys to said Trigg, without reservation or exception, the interest derived by Thomas L. Preston from said will in the Salt Works estate & lands, "as well as that interest in the said Salt Works estate and lands which was sold and conveyed to the said Thomas L. Preston by the said John S. Preston." There is no reference whatever in said deed of trust to any agreement of Thomas L. Preston to convey to John *L.* Preston any portion of the Salt Works estate as devised by M'r's Sarah B. Preston to her three sons and as sold and conveyed by John S. Preston to Thomas L. Preston. Nor do respondents believe that the deed from John S. Preston to Thomas L. Preston contained any such reservation or stipulation as that which complainant avers is in said agreement. But it has suited the parties to said deed not to record or to produce it. Respondents call upon them to produce and file it in this case. Its execution is thrice recited in said deed of trust. It was a conveyance of all John S. Preston's interest in the Salt Works estate, including all the lands devised by Sarah B. Preston, as constitution that estate. At once Thomas L. Preston claims to exercise & exercises acts of absolute ownership over
77 the property—the entire property—in the Preston's Salt Works sold and conveyed to him by John S. Preston. As owner by deed, he conveys to C. F. Trigg, the trustee, John S Preston's full third and his own third in the Preston's Salt Works estate, including, according to the claim ascerted in the bill, the very lands complainant now seeks to recover.

The said Thomas L. Preston afterwards, on the 9' day of December, 1847, purchased W'm C. Preston's entire interest in the estate, real and personal, of Sarah B. Preston, derived under and by virtue of her will, as appears by a copy of the contract of sale filed in the case of W'm C. Preston vs. Thomas L. Preston & C. F. Trigg in the circuit court of Smyth, marked "No. 1" as part of this answer.

On the 7' of January, 1850, the said Thomas L. Preston and wife conveyed the entire Salt Works estate, including his own interest & the interest of W'm C. Preston and John S. Preston, acquired by purchase from them, to Connally F. Trigg, trustee, to secure to W'm C. Preston twenty-five thousand dollars. In that deed of trust also it is stated, in reference to the interests purchased of W'm C. Preston & John S. Preston, "both of which have been heretofore conveyed to him." The deed from W'm C. Preston to Thomas L. Preston has been executed & delivered for record and recorded, as appears by a copy thereof
78 marked "No. 2," and exhibited as part of this answer.

A copy of said deed of trust to Trigg to secure W'm C. Preston is also exhibited, marked "No. 3," as part of this answer, by which it again appears that a conveyance had been made by John S. Preston to Thomas L. Preston for his entire interest in the Preston Salt Works estate and lands. This statement thus repeated made by Connally F. Trigg, who wrote the agreement between John S. Preston & Thomas L. Preston, and who was trustee in both deeds of trust, and who acted as agent and attorney of both parties to the agreement, and made by Thomas L. Preston, the grantor in the deed, establishes, as respondents are advised, the fact of the conveyance by John S. Preston to Thomas L. Preston. Why is this conveyance not produced? Why is it not recorded?

Again, on the 11' of October, 1858, Thomas L. Preston leased to Spencer, Ackerman, White, and Palmer, for ten years from 1' January, 1859, "the Preston Salt Works estate" and wherever are situated the Salt Works and plaster-banks of the said party of the first , (Tho's L. Preston,) containing seven thousand acres of land, more or less, and also the King Salt Works estate, containing four thousand acres. The grantees to the lessees the quiet and undesturbed possession of both estates and lands during the term, without exception or reservation.

79 Respondents file as part of this answer a copy of said lease, marked "No. 4." This lease, by assignment, was acquired by Stewart, Buchanan & Co., of which firm respondents were members & partners. The lands now claimed by complainants were held by the lessees during entire term as part and parcel of the Preston Salt Works estate. Indeed, the said Thomas L. Preston had, before said lease, held, occupied, and operated the Preston Salt Works, including the lands now claimed by complainant. These lands he held, occupied, and enjoyed as part and parcel of the Preston Salt Works. He shewed them to the lessees as his property and as part of the leased premises.

During the continuance of this lease, on the 7' day of July, 1859, the said Thomas L. Preston & wife, by deed, conveyed to Robert Gibboney "all that tract or parcel of land lying in the county of Smyth, on the waters of the North Fork of the Holston, and commonly known as the Preston Salt Works estate, with all the appurtenances and appendages thereto belonging, and containing six thousand nine hundred and ninety-five acres, be the same more or less." There is no exception or reservation in this conveyance of any part of the Preston Salt Works estate and lands. All the tract, with all other estate, real and personal, of Thomas L. Preston, is conveyed by this deed to Gibboney, in trust, to secure numerous creditors, and, among others, John S. Preston,

80 about one hundred and ten thousand dollars, and W'm C. Preston, about twenty-five thousand dollars, as preferred creditors. The power is given to the trustee "to sell either at private or public sale, and upon such terms as in the opinion of the trustee will best promote the objects of the deed and convey the same, the said Preston's Salt Works estate." All which will more fully appear by a copy of said deed of trust, exhibited as part of this answer, marked "No. 5."

On the 10' day of June, 1862, Robert Gibboney, trustee for Thomas L. Preston under said deed of trust, sold to respondents and Geo. B. Parker the following real estate, lying in the counties of Smyth and Washington, being all the estate, right, title, and interest which the said Thomas L. Preston conveyed to the said Robert Gibboney by his deed aforesaid, bearing date the seventh day of July, 1859, in the Preston's Salt Works estate and the lands contiguous thereto, estimated to contain six thousand nine hundred and ninety-five acres, be the same more or less, being the land intended to go with the Salt Works estate in said Preston's deed expressed; also certain interests in the King estate, for the consideration of four hundred and twenty-five thousand dollars. Respondents agreed to substitute their notes for the debts of such creditors as might refuse to receive currency in payment.

81 All which will more fully appear by a copy of the contract of sale herewith exhibited, marked "No. 6," as part of this answer.

The said John S. Preston refused to receive currency for his debt, and respondents, according to their agreement, gave to said trustee their notes for the amount, secured to said J. S. Preston in the trust-deed.

On the 7' of August, 1859, John S. Preston, by contract in writing with Robert Gibboney, trustee, agreed to extend the time of payment of the

debt secured to him in the deed of trust so as to enable him to sell under the deed of trust. Neither he nor W'm C. Preston proceeded to sell under their prior deeds of trust, but allowed Gibboney, the trustee, to proceed to sell under the deed to secure them primarily out of the proceeds of the whole trust property.

Thus it will be seen that the entire Preston Salt Works estate and lands, without reservation, are devoted by Thomas L. Preston to the payment of debts due John S. Preston, as is all the other estate, real and personal, conveyed in the deed of trust. Respondents will file, if they can procure, a copy of the contract between said John S. Preston and Gibboney, as trustee. It will also appear that the land now claimed by complainant has been sold to respondents by said trustee not only without any objection by J. S. Preston, but with his
82 sanction and approval and for his benefit. He has received large payments from said Gibboney, as trustee, on account of his debt secured in the deed of trust. Gibboney's payments reduced his debt from $169,677.62, as claimed by him in June, 1862, to $125,000, principal, or about $132,000 or $133,000, including interest. Respondents during the war paid him on account of his debt enough to reduce it to $100,000, and since the war they have by payments to him and to complainant, as his trustee, reduced the debt to $76,000. These payments were made to John S. Preston upon his application or order, until by his assignment or deed of trust complainant claimed to be trustee for the benefit of his mother and sisters, and since then to complainant or his order. Receipts were generally given for the payments, & respondents are to be credited on their note in the hands of James C. Campbell, trustee of Thomas L. Preston, for the debt secured to John S. Preston.

And now, after the lapse of 26 years, this claim is asserted to a part of the Salt Works estate. It is stated in the bill that in reality the land claimed is a part *part* of the Salt Works estate. It is conceded that John S. Preston has conveyed to Thomas L. Preston his interest in the land now claimed under him. If he had not conveyed it the title would remain in him, and ejectment would *be* to recover it, unless barred by some legal or equitable defence. But it is alleged in the bill that
83 the land claimed is part of the Salt Works estate, and came into the ownership and possession of Thomas L. Preston.

Respondents deny the right of complainant to institute or maintain this suit. They deny that John S. Preston has by deed given to and conveyed to complainant his right or interest in said tract of land now claimed by him. The paper exhibited by him as a deed, marked "C," is not a deed, and has never been legally recorded, as respondents are adviced.

Under color of this supposed deed, complainant claims to have laid off to him and to have possession surrendered to him by respondents of a tract of 500 acres of land, part of the Preston Salt Works estate, known, as said paper C describes it, as the Campbellsville tract. Respondents deny that there is any such tract of land as that described in said Exhibit C known as the Campbellsville tract.

Complainant bases his claim upon the following clause in the agreement between John S. Preston and Thomas L. Preston of 30 August, 1847:

"The said Thomas L. Preston, in part for the consideration hereinbefore expressed, also agrees to convey to the said John S. Preston a tract of land adjoining the Salt Works estate containing about three hundred and fifty acres, and known as the Campbellsville tract,

84 and also a sufficient quantity of other lands adjoining the said tract to make up the quantity of five hundred acres of land."

This land is described in said agreement not as a part of the Preston Salt Works estate, nor as a part of the Preston Salt Works tract, but as "adjoining the Salt Works estate." And yet complainant in his bill, in setting forth the said covenant, alleges that Thomas L. Preston agreed and covenanted to convey to him (John S. Preston) a certain tract of land described in the covenant as adjoining the *the* said Salt Works estate, the same being in reality a part of said Salt Works estate. And in the agreement between John S. Preston and complainant, misscalled a deed, of 21 Dec'r, 1870, the former bargains and sells to the latter "all his right to a parcel of land known as the Campbellsville tract, containing 500 acres, being a part of the Preston Salt Works tract, and reserved by said J. S. Preston in his sale to Tho's L. Preston of his interest in said Salt Works tract under the will of Sarah B. Preston."

Respondents deny that there is any such reservation in the agreement of 30 of August, 1847, as is stated in the agreement aforesaid of 21 Dec'r, 1870. It is an agreement to convey, not a reservation.

Respondents explicitly deny the allegation of the bill that "this same Campbellsville tract is well known and distinguished from the other
85 parts of the said Salt Works estate and can easily be made out by metes and bounds." Respondents deny that there is any such tract of land as that claimed in the bill as a tract of 350 acres of land, known as the Campbellsville tract, part of the Preston Salt Works estate. They know of no tract or parcel of land of that quantity, constituting part of the Salt Works estate, which came to the ownership of Thomas L. Preston, and, under him and his trustee, into the possession and ownership of respondents. They claim to own and have possession of the land where they have understood complainant claims to locate the 350 acres to make up the 500 acres claimed by him. But respondents know of no metes and bounds by which he can locate any 350-acre tract as the basis of a location of 150 acres adjoining to make up 500 acres. Respondents know of no title-deed or title-papers for any tract of 350 acres of land in the boundary claimed by them, or called the Campbellsville tract, or calling for the Campbellsville tract. The body of land where complainant claims to locate his claim, as respondents understand, was derived from Humberson Lyon.

Respondents do not know whether Thomas L. Preston has executed any conveyance according to his covenant or not, nor do they know why he has not done so if he has failed to do so, nor why he has
86 not put his brother, John S. Preston, or complainant, into possession of the land he agreed to convey. But if respondents are, as alleged, in the possession of any land which the said Thomas L. Preston agreed to convey to John S. Preston, and claim it as belonging to themselves, they claim to hold it free from the claim of complainant. They deny the right of John S. Preston, or complainant under him, to enforce specific execution of the contract with Thomas L. Preston to their prejudice. The said John S. Preston, according to the showing of the bill, knowing that the Salt Works estate and lands, including the so-called Campbellsville tract, had not only been leased for ten years to respondents and their co-lessees, but was conveyed by his brother, Thomas L. Preston, in trust, for the benefit of his creditors, he being the principal creditor, stood by and permitted respondents to purchase the entire Preston Salt Works estate, and then after such great lapse of time seeks by transfer of his claim to his son to deprive respondents of

part of the estate so purchased and held by them. Such a claim is inequitable and ought not to be enforced; because—

1. It is stale. 2nd. It is barred by the statute of limitations, which respondents plead and rely upon. 3rd. The agreement itself, on
87, 88 which complainant founds his claim, is too uncertain to be enforced. 4. The land claimed cannot be identified by the description, there being no such of 350 acres by metes and bounds as that described. 5. The location, boundary, or description of 150 acres is not given, so that the court could locate the additional quantity to make up the 500 acres. 6. The rights of respondents ought to be disturbed or taken from them by such a pretended equity as that asserted. 7. In answer to the special demand of complainant for discovery from respondents, who are required especially to disclose whether, when they made their purchase from Robert Gibboney, they knew, or had any reason to believe, that Thomas L. Preston had covenanted, as alleged, that he would convey the aforesaid five hundred acres to John S. Preston, respondents say that when they made their purchase from Robert Gibboney, trustee, they did not know, nor had they any reason to believe, known to them, that Thomas L. Preston had covenanted, as alleged, to convey the said 500 acres to John S. Preston. They did not know of the agreement, and believed that John S. Preston had conveyed to Thomas L. Preston his entire interest in the Preston Salt Works estate, and had no knowledge or notice that any part of the lands comprised in that
89 estate did not belong to it, or were to be conveyed to John S. Preston. And had their attention been called to the terms of the covenant, (which was not done.) they would have had no reason to suppose or believe that an agreement to convey a tract of land adjoining the Salt Works estate, as complainant now construes the agreement; nor would the designation of the Campbellsville tract of 350 acres have informed them that it was a part of the Preston Salt Works estate, for they did not then know, nor do they now know of Campbellsville, or of the Campbellsville tract of land, nor do they believe that there is any such tract of land among the various tracts composing the Preston Salt Works estate. So far as they know or believe, its existence, as part of the 6,995 acres of land constituting the Preston Salt Works estate, is a myth, and that the idea that "adjoining" the Salt Works estate meant and means "a part" of that estate is an afterthought.

Respondents file with this answer, as part thereof, a list from the commissioner's books of Smyth County of the lands composing the Salt Works estate, as claimed and represented by Thomas L. Preston, marked "G G," from which it will appear that there was no such tract as 350 acres, and no designation of any tract as the Campbells-
90 ville tract. Thomas L. Preston had an inclusive survey made of the lands composing the Preston Salt Works estate belonging to him, and embraced the body of land upon which complainant now proposes to locate his claim of 500 acres. Your respondents in November, 1867, had a survey of the Preston Salt Works lands made by Isaac A. McQuown, a skillful surveyor, and county surveyor of Washington County, which includes the lands complainant now proposes to take, and shews that, including them and excluding entries made by respondents of 179 acres to perfect their titles, the total quantity is only 6,608¼ acres, instead of 6,995 acres purchased by them. Should complainant be allowed to take the 500 acres claimed by him, the deficiency would be 887 acres. Said survey is exhibited, marked "No. 7," as part of this answer.

Under all these circumstances respondents are advised that it would

be inequitable to compel them to surrender a valuable part of the estate purchased by them, and thus to dismember that estate to the great detriment of the estate itself. They are advised that as there was no lien reserved upon the estate sold and conveyed, respondents are purchasers without notice, and are unaffected by the pretended equity now
91 asserted. They deny that complainant has any equity against them.

Respondents deny all such allegations of the bill as are not already admitted, denied, or avoided.

Respondents have no recollection of any demand at any time being made upon them for the surrender of possession of the land in controversy to the complainant, and therefore deny the allegation of the compl'ts' bill in that regard.

Respondents, having fully answered, pray to be hence dismissed with their costs.

W. A. STEWART.
G. W. PALMER.

VIRGINIA, *Washington County, to wit:*

I, Worley Musselwhite, a notary public for the county aforesaid, in the State of Virginia, do hereby certify that William A. Stewart and George W. Palmer personally appeared before me in my county aforesaid, and made oath that the facts stated in the foregoing answer, so far as made as of their own knowledge are true, and so far as made upon the information of others, they believe them to be true.

Given under my hand this 26th day of May, 1873.

WORLEY MUSSELWHITE, *N. P.*

92 [Exhibit No. 1, referred to in the foregoing answer, and as filed with the same, is missing from the record in this cause.

S. PATTERSON, *Clerk.*]

Exhibit No. 2, referred to in the foregoing answer, is in the words and figures following, to wit:

Know all men by these presents, that I, W'm C. Preston, of the town of Columbia, and State of South Carolina, in consideration and in execution of an agreement entered into on the ninth day of December, 1847, between me, and Thomas L. Preston, of Virginia, and of his execution of bonds to me for the sum of twenty-five thousand dollars, payable as will appear thereby, which bonds are to be secured by a deed of trust on the Salt Works, have granted, bargained, sold, and released, and by these presents do grant, bargain, sell, and release unto the said Thomas L. Preston, all the real estate devised to me by the will of the late Sarah B. Preston, and all my right, claim, and interest therein, with all the rights and appertu*m*ances to the said real estate belonging, to have and to hold said real estate unto the said Thomas L.
93 Preston, his heirs and assigns, forever, in fee-simple, hereby warranting the same. As witness my hand and seal this 25th day of April, in the year of our Lord 1848.

[SEAL.] W'M C. PRESTON.

Witness:
T. H. JOHNSON.
T. E. WANNAMAKER.
J. E. GLENN.

STATE OF SOUTH CAROLINA,
Richland District:

I, James S. Guignard, clerk of the court, and magistrate, ex officio, do hereby certify unto all whom it may concern, that Louisa Penelope Preston, the wife of the within-named W'm C. Preston, did this day appear before me, and upon being privately and separately examined by me, did declair that she does fully, voluntarily, and without any compulsion, dread, or fear of any person or persons whomsoever, renounce, release, and forever relinquish unto the within-named Thomas L. Preston, his heirs and assigns, all her interest and estate, and all her right and claim of dower of, in, or to all and singular the premises within mentioned and released.

Given under my hand and seal this 25th day of April, 1848.

[SEAL.] LOUISA P. PRESTON.

94 JAMES S. GUIGNARD,
Clerk of court, ss:

THE STATE OF SOUTH CAROLINA,
Richland District:

Before me, James S. Guignard, clerk of the court of common pleas in and for the district aforesaid, personally came and appeared the honorable William C. Preston, and acknowledged that he did sign, seal, and execute the foregoing conveyance for the uses and purposes therein mentioned, and that he executed the same in the presence of T. H. Johnson, T. E. Wannamaker, and J. E. Glenn, who witnessed the due execution thereof.

Acknowledged before me this 21st day of July, 1848.

W. C. PRESTON.

JAMES GUIGNARD, *Clerk of Court.*

I, J. S. Richardson, one of the associate judges of the State aforesaid, and presiding judge of the court of common pleas in the State of South Carolina, do hereby certify that the above subscribing James Guignard is clerk of the aforesaid court, that all due faith and credit is and ought to be given to his signature as such, and that his signature is genuine.

J. S. RICHARDSON.

95 VIRGINIA.—At a court held for Smyth County the 19th day of December, 1848.

The foregoing deed from W. C. Preston & Louisa P., his wife, to Thomas L. Preston, was presented in court, and, with the several certificates annexed, ordered to be recorded.

Teste: W. B. MORGAN, *D. C.*

A copy. Teste: W. C. SEXTON, *Clerk.*

[Exhibit No. 3, referred to in the foregoing answer, and as filed with the same, is missing from the record in this cause.

S. PATTERSON, *Clerk.*]

Exhibit No. 4, referred to in the foregoing answer, is in the words and figures following, to wit:

Articles of agreement made and entered into this 11th October, 1858, between Thomas L. Preston, of the county of Smyth and State of Vir-

ginia, of the first part, and Thomas Spencer, Hamilton White, Harman Ackerman, and George W. Palmer, of the city of Syracuse and State of New York, of the second part, witnesseth:

That the party of the first part, for and in consideration of the sum of fifty thousand dollars to be paid by the parties of the second part annually from and after the first day of April, 1859, hath rented,
96 leased, demised, and to farm let unto the party of the second part all that tract or parcel of land lying and being in the county of Smyth, in the State of Virginia, known and called the Preston Salt Works estate, and whereon are situated the salt works and plaster banks of the said party of the first part, containing seven thousand acres, more or less, for a period and term of ten years from and after the 1st day of January, 1859, together with all the appurtenances, priveleges, and appendages hereto belonging. Also the lands and tenements adjoining the above-leased premises known and called the King Salt Works estate, lying and being in the county of Washington and State of Virginia, containing four thousand acres, more or less, with all the appurtenances, appendages and privileges thereto belonging, for the full end and term of ten years from and after the 1st day of January, 1859, upon the following stipulations and agreements:

First. The parties of the second part are to have the quiet and undisturbed possession of the aforesaid Preston estate for the term aforesaid, together with the use of all the salt works, fixtures, furnaces, buildings and machinery for the manufacture of salt and lumber, storing and vending the same; all the plaster banks, fixtures, machinery and buildings for raising, grinding, storing and vending plaster, to-
97 gether with the farming lands on said estate for agricultural purposes, and the right to cut, take and make use from all the woodlands all wood necessary and proper for the manufacture of salt and plaster on either estate, and domestic and farming purposes of themselves and their servants or hands in their employment on said premises, except from the slopes and hills on the south and east of the Salt Works flat, and for the construction of any buildings as hereinafter mentioned, for which they agree and bind themselves jointly and severally to pay the said party of the first part the sum of fifty thousand dollars per year, payable annually from and after the 1st day of April, 1859. And the parties of the second part are to have a quiet and undisturbed possession of the aforesaid King estate for the term of ten years from and after the 1st day of January, 1859, together with all the salt works, fixtures, machinery and buildings thereon for the manufacture and sale of salt and for agricultural purposes, with the right to cut, take and use timber from said estate for manufacture of salt on either estate, buildings, fencing, farming and domestic purposes for themselves, their servants and agents, for which the said parties of the
98 second part agree and bind themselves to pay the party of the first part the sum of twenty thousand dollars annually from and after the said 1st day of April, 1859, for the full end and term of ten years; and the said party of the first part hereby guarantees and binds himself to warrant the party of the second part the quiet and undisturbed possession of the said King estate for the term aforesaid. And the said party of the first part binds himself to deliver the possession of both said estates on the first day of January, 1859, to the party of the second part.

Second. The party of the second part agree and bind themselves to receive and take sixty head of mules with their gearing and wagons now used in the necessary hauling, for the manufacture of salt and raising and grinding plaster, at such prices as may be agreed on between

the parties as fixed by persons chosen for that purpose, and return to the party of the first part property of the same description and value at the termination of this lease, or pay in money the valuation agreed upon or fixed as aforesaid.

Third. The parties of the second part agree to take and pay for, on the 1st January, 1859, all the salt on hand at the place of manufacture, and such as is unsold in market, at *east*, to wit: salt in the bins at the works at 10c. per bushel of fifty pounds, such as is packed for market, and such as has been sent to market at 10c. per bushel of fifty
99 pounds, and the cost of packing, transporting and storing, when storage has been incurred; also, all the plaster on hand at the banks or transported to market and unsold, at cost, to wit: plaster raised in the rock at the mine at 75c. per ton of two thousand pounds; that in market at the same price per ton, with charges of transportation and storage added, where storage is incurred.

Fourth. The party of the second part are to receive, in one year after the termination of this lease, the reasonable cost of erecting such permanent fixtures and buildings as they may place upon the leased premises by the written assent of the said party of the first part or his legal representatives.

Fifth. The party of the first part hereby transfer to the party of the second part his warehouses at Wytheville, Mack's Meadows, New Berne, Christiansburg, Big Lick, Bonsacks, and Liberty, on the Virginia and Tennessee Railroad, for their use during the continuance of this lease, which said houses, together with all the other hereby leased premises, fixtures, furnaces, machinery and buildings, the said second party bind themselves to return at the expiration of this lease in as good order and condition as they received them on the 1st day of January, 1859, except such depreciation as p'udent repairs will not guard against, and
100 unless destroyed or rendered unserviceable by unavoidable accident.

Sixth. At the termination of this lease, the party of the first part agrees to take the salt and plaster on hand or in market at the same rates and prices mentioned in the third article of this lease.

Seventh. It is mutually agreed no unusual method of supplying or stocking the market with salt or plaster by reducing prices or otherwise shall be resorted to or taken by the party of the first part before the 1st day of January, 1859, or by the party of the second part for one year preceding the termination of this lease, nor shall the party of the second part have on hand at the end of the lease, or in market, more salt or plaster, or either, than will supply the markets of the hereby leased premises for a larger period than six months after the termination of the lease based on an estimate of the ordinary sales.

Eighth. If, during the continuation of this lease, salt water should be found beyond the leased premises, from which salt is manufactured and sold in such quantities as materially to effect the markets within which the salt manufactured on the leased premises is sold, then the lessees may, upon sixty days' notice in writing to the party of the first part, terminate this lease upon the same terms as if it expired by its own limitations.

Ninth. The party of the first part binds himself to pay and dis-
101 charge the taxes and legal assessments on the real property hereby leased during the continuance of the same.

Tenth. It is further understood and agreed that the parties of the second part and their representatives shall have the preference over any other parties for a renual of the lease of the Preston estate and its

privileges for a second term of ten years, on such terms as shall be equitably agreed upon between them and the party of the first part, and also of the King estate, provided the party of the first shall own or can control the same.

Eleventh. The parties of the second part shall, except in special cases, use the brand of "Preston & King Salt" on the packages manufactured and sold by them.

In witness whereof the parties hereto have set their hands and seals this eleventh day of October, A. D. 1858.

(Signed)

THO. L. PRESTON. [SEAL.]
THO'S SPENCER. [SEAL.]
HAM'L WHITE. [SEAL.]
H. ACKERMAN. [SEAL.]
GEO. W. PALMER. [SEAL.]

STATE OF NEW YORK,
Onondago County, to wit:

I, John Dumford, a justice of the peace in and for the State and county aforesaid, do certify that Thomas L. Preston, Thomas
102 Spencer, Hamilton White, Harman Ackerman, and George W. Palmer, parties whose names are signed to a deed of lease bearing date the 11th day of October, 1858, and hereto annexed, personally appeared before me in my said county, and acknowledged the same.

Given under my hand and seal this 12th day of October, 1858.

[SEAL.] JOHN DUMFORD, *J. P.*

VIRGINIA.—At a court of quarterly session, held for Smyth County, November 16, 1858.

The above article of agreement between Tho's L. Preston and Thomas Spencer, Hamilton White, and others, was this day presented in court and, with the certificate of acknowledgment thereto annexed, ordered to be recorded.

Teste: W. C. PRESTON, *C.*

[Exhibit No. 5, referred to in the foregoing answer, is in the same words and figures as Exhibit I, filed with the plaintiff's bill, to which it is referred.]

103 Exhibit No. 6, referred to in the foregoing answer, is in the words and figures following, to wit:

This agreement, made and entered into the tenth day of June, in the year of our Lord one thousand eight hundred and sixty-two, between Robert Gibboney, trustee for Thomas L. Preston, under and by virtue of his deed, bearing date the seventh day of July, eighteen hundred and fifty-nine, of the first part, and W. Alexander Stuart, George W. Palmer, and George B. Parker, of the second part, witnesseth:

That for and in consideration of the covenants and agreements to be performed by said parties of the second part, and stipulated in the agreement, the said Robert Gibboney, trustee as aforesaid, hath this day sold to the said parties of the second part the following real estate lying in the counties of Smyth and Washington, being all the estate, right, title, and interest which the said Thomas L. Preston conveyed to the said Robert Gibboney by his deed aforesaid, bearing date the seventh day of July, eighteen hundred and fifty-nine, in the Preston's Salt Works estate, and the lands contiguous thereto, estimated to con-

ain six thousand nine hundred and ninety-five acres, be the same more or less, being the lands intended to go with the Salt Works estate in said Preston's deed expressed. Also, the following interests of
104 said Thomas L. Preston in the King's Salt Works estate, and the lands intended to go therewith, being the interests acquired by purchase by said Thomas L. Preston of L. L. Henderson & wife, one thirty-sixth, ($\frac{1}{36}$;) of John Good's heirs, one thirty-sixth, ($\frac{1}{36}$;) of Thomas Finley, one thirty-sixth, ($\frac{1}{36}$;) of Daniel Trigg & wife, one thirty-second, ($\frac{1}{32}$;) together with all the appertunances thereto belonging, or in any wise ap'ertaining, for which estate the said W. Alexander Stuart, George W. Palmer, and George B. Parker have agreed and hereby agree and bind themselves to pay to said Robert Gibboney, trustee as aforesaid, the sum of four hundred and twenty-five thousand dollars, as follows, to wit: The debt which Stuart, Buchanan & Co. hold upon said property and liens thereon are to be paid by the parties of the second part, and handed over to said Gibboney, trustee, within six months, as a payment on the property aforesaid, and the balance of the purchase-money to be paid to said Gibboney, trustee, on or before the first day of July next. All debts which said party of the second part shall pay under the direction of said Gibboney are to bear interest to the first day of July next, and so with any money of the parties of the second part which said Gibboney himself may invest in debts which are liens on the property.

It is further agreed, and distinctly understood, that in the event
105 said Gibboney shall be unable to pay off the creditors of said Thomas L. Preston with the funds paid by the parties of the second part, in consequence of the refusal of said creditors, or any of them, to receive the money in payment, that then said parties of the second part will substitute their notes for the amount so refused, *second* to the satisfaction of said Gibboney, for notes in equal instalments payable in one, two, three, four and five years from the first day of July next, or sooner, if the parties of the second part shall elect to do so, with interest on same from the said first day of July next, and interest on the whole amount, payable annually.

Said Gibboney, trustee, is to receive the rents of said property up to the first day of July next, and said parties of the second part are to receive the rents of said property from said first day of July next until the termination of the lease to Spencer, Ackerman & Co., which will be on the first day of January, in the year one thousand eight hundred and sixty-nine. It being understood that the entire interest of said Preston, under said lease, is hereby sold and intended to be transfe'red to the parties of the second part. On the payment of the purchase-money the said Robert Gibboney, trustee, is to convey to said parties of the second part, their heirs or assigns, the property herein described, with covenants of special warranty.

(Signed in duplicate.)

Witness the following signatures and seals:

106 . ROBERT GIBBONEY, [S. L.]
Trustee for Tho's L. Preston.
W. ALEX. STUART. [S. L.]
GEO. W. PALMER,
By W. A. STUART, *Atto. in Fact.*
GEO. B. PARKER, [S. L.]
By W. A. STUART, *Atto. in Fact.*

Teste:
HE. S. MATTHEWS.

It is further agreed between the parties to the foregoing agreement that said Gibboney, trustee, is to pay the taxes on the property sold and mentioned in the agreement for the present year, and the parties of the second part are to pay all taxes and other assessments on said estate thereafter, and also all taxes which may be assessed on the Kings Salt Works estate as agreed to be paid by said Preston in the lease mentioned and refer'ed to.

Given under our hands this eleventh day of June, A. D. eighteen hundred & sixty-two.

ROB'T GIBBONEY,
Trustee for Tho's L. Preston.
W. ALEX. STUART.
G. W. PALMER
& GEO. B. PARKER,
By W. A. STUART,
Atto. in Fact.

Teste:
H. S. MATTHEWS.

WASHINGTON, *Smyth County, to wit:*

I hereby certify that the foregoing article of agreement between Robert Gibboney, trustee for Tho's L. Preston and W. Alex.
107 Stuart, Geo. W. Palmer, & Geo. B. Parker, is a true copy from the original.

Teste:

W. C. SEXTON,
Cl'k of Smyth Co. Court.

Exhibit GG, referred to in the foregoing answer, is in the words and figures following, to wit:

Table of tracts of land for the year 1861, *in Smyth Co., within the dist. of John Shannon, com'r of the revenue, with taxes thereon at forty cents on every hundred dollars value thereof.*

Name of the person who by himself or by his tenant has the freehold in possession of the land charged.	Residence of the owner of the tract of land.	Nature of the owner's estate, whether held in fee or for life.	Number of acres in each tract.	Name of the tract and description of the land as to water-courses, mountains, or other places on or near which it lies,	Distances and bearing from the C. H. Bearing.	Distances and bearing from the C. H. Miles.	Total value of land per acre, including buildings.	The sum included in the value of each tract of land on account of buildings.	Total value of the land and buildings. Buildings.	Total amount of taxes on on the whole tract at forty cents on every $100 value thereof.	Explanation of the alterations during the preceding year, especially from whom and how the owner desired the land, and why and upon what authority any alteration was made.	County levy. Amount of levy for county purposes 122 p'r centum on the State taxes.
Tho's L. Preston...	Bedford...	Fee.....	89¼	North Fork.....	N. W.	18	20	1,790	.....	7 16	.....	8 74
Same.....	" ...	"	52	"	"	"	15	780	.....	3 12	.....	3 81
Same.....	" ...	"	330	Salt Works.....	"	"	1,300	429,000	25,000	1,716 00	.....	2,095 52
Same.....	" ...	"	2,055	Chestnut Ridge.....	"	"	10	20,550	.....	82 20	.....	129 00
Same.....	" ...	"	90	North Fork.....	"	"	5	420	.....	1 80	.....	2 20
Same.....	" ...	"	79	"	"	"	10	790	.....	3 16	.....	3 86
Same.....	" ...	"	100	"	"	"	5	500	.....	2 00	.....	2 44
Same.....	" ...	"	200	"	"	"	10	2,000	.....	8 00	.....	9 76
Same.....	" ...	"	1,040	Chestnut Ridge.....	"	"	10	10,400	.....	41 60	.....	50 75
Same.....	" ...	"	320	"	"	"	10	2,200	.....	8 8	.....	10 74
Same.....	" ...	"	100	"	"	"	5	500	.....	2 00	.....	2 44
Same.....	" ...	"	12	"	"	"	5	60	.....	24	.....	29
Same.....	" ...	"	400	"	"	"	5	2,000	.....	8 00	.....	9 76
Same.....	" ...	"	90	"	"	"	5	450	.....	1 80	.....	2 20
Same.....	" ...	"	147	"	"	"	5	735	.....	2 94	.....	3 69
Same.....	" ...	"	200	"	"	"	10	2,000	.....	8 00	.....	9 76
Same.....	" ...	"	100	Gap Little Mountain...	"	"	5	500	.....	2 00	.....	2 44
Same.....	" ...	"	170	North Fork.....	"	"	8	1,360	.....	5 44	.....	6 64
Same.....	" ...	"	200	Gap Little Tumbling...	"	"	5	1,000	.....	4 00	.....	4 88
Same.....	" ...	"	50	North Fork.....	"	"	6	250	.....	1 00	.....	1 22
Same.....	" ...	"	100	Cove Creek.....	"	"	5	500	.....	2 00	.....	2 44
Same.....	" ...	"	488½	"	"	"	10	4,885	.....	19 54	.....	23 84
Same.....	" ...	"	11 & 92 p.	North Fork.....	"	"	20	232	.....	93	.....	1 13
Same.....	" ...	"	630	"	"	"	8	5,040	.....	20 16	.....	24 60
Same.....	" ...	"	312	"	"	"	5	1,560	.....	6 24	.....	7 61
Same.....	" ...	"	168	"	"	"	21	3,528	.....	14 11	.....	17 11

A copy, Teste:

W. C. SEXTON, *S. C. C.*

109 Exhibit No. 7, referred to in the foregoing answer, is in the words and figures following, to wit:

Surveyed for Geo. W. Palmer and William A. Stuart 5,973 acres 1 roods and 34 poles of land mostly in Smyth County, lying at Saltsville, being the land formerly owned by Thomas L. Preston, and bounded as follows, viz:

Beginning at can'on set up for a corner on the south side of a ridge bearing N. 6¼ W. 15 ⅗ poles from a large poplar standing on the side of a ridge—formerly two lynns —a corner of the salt-lick tract of 330 acres; thence with south 72 poles to another cannon in a flat, formerly a sugar-tree and buckeye, afterwards five ashes in a marsh; thence ran by Sarah B. Campbell's 2,055-acre survey, with a line of the King estate S. 1 west 86 poles to a plum and ash sprouts on the north side of a ridge formerly a Spanish oak, a corner to Peter Lee's 250 acres, it being an older survey than Sarah B. Campbell's; ran with it S. 37 E. 90 poles, to a stake 8 feet we't of a locust marked as a pointer on top of a high ridge S. 71 W. 64⅘ poles to pointers in a hollow; thence with 2,055 acres again S. 2¼ W. 170 poles, crossing McHenry's Creek to a can'on set in a poplar stump E. of a road 6 poles & five links S. 48 E. 182, passing Gardner's corner, and with his line crossing the creek twice to a stake on a rocky hillside in a field—

Gardner's—N. 67 E. 63 poles to a white oak stump on the north
110 side of a ridge; marked a dogwood & white oak pointers N. 3 W. 35 poles, crossing the creek to a stake on the south edge of Fowler's creek S. 19½ E. 114 poles to a white oak, Spanish oak, & hickory about 3 poles west of the creek; thence with Miller's line N. 64½ E. 146¼ poles to a white oak at the end of Buchanan's lane, formerly 4 white oaks, N. 24½ E. 78¼ poles to a stake on top of a hill, Buchanan's corner still with their lines, N. 73½ E. 131 poles to a maple stump 2 poles east of Fowler's Mill Creek, S. 76 E. 10 poles to a poplar stump on the side of a hill, S. 87½ E. 22⅘ poles to a dead white oak by a fence, N. 28½ E. 31⅓ poles to a black oak on the south side of a ridge, leaving Buchanan's lines, and with Ja's Rector's lines N. 69½ E. 61¼ poles to a black oak stump, east of a black oak pointer, N. 46½ E. 65⅓ poles to a black stump, on top of a hill, N. 10 E. 23½ poles to a flat rock near the schoolhouse seat, N. 55 E. 59 poles to a black oak and white oak on the north side of a ridge, a corner to Goolsby's land; thence with his line N. 62 E. 116 poles to a stake near a peach tree, 1 pole west of the Salt Works road, leading through Lyon's Gap of Walker's Mountain, leaving the 2,055 acres, & with a 1,040-acres survey made for Francis Preston, N. 42¼ E. 130 poles to two white oaks by a fence, a corner to Shanon; thence with his line N. 56¾ E. 343 poles to two white oaks, (one down,) by three sink-holes, N. 86 E. 182 poles with Wilson Buchanan to a white oak & dogwood on the south side of a hill, a corner to Mr. Fulton's land; thence with her lines N. 73 E. 81 poles to a stake 1 pole east of a branch,

a Spanish oak pointer S. 56 E. 6 poles, to a stake on the side of a
111 hill, a white oak & black oak pointers N. 75 E. 129 poles to a white oak on the north side of *a* the valley road, N. 65¾ E. 78¾ poles along a marked line to a stake in a field 2 poles from a white oak, N. 23½ W. 47 poles to two dead black oak; at the corner of a field marked pointers N. 28¼ E. 94⅘ poles to a white-oak stump in the edge of a field; marked a locust pointer 20 feet N. W. of the stump, leaving Fulton's lines; thence with the lines of Wilson Buchanan's land S. 75⅓ W. 318 poles, crossing a branch to a white oak & hickory on the top of a ridge, leaving the lines of the 1,040 acres; thence with a survey recently made

for the said Palmer & Stuart with Wilson Buchanan, N. 17½ E. 56 poles, crossing a deed hollow to a small white oak and fallen black oak on the side of a ridge; marked pointers N. 13½ W. 134 poles to a dead double chestnut on top of a ridge, a corner to Crenshaw's land; thence with his line N. 08 west 65 poles to two chestnut-oaks on top of a ridge; thence with the lines of the 1,000 acres and with Whittaker's line, N. 75 W. 46 poles, crossing below a spring about 2 poles to a stake on the side of a hill 5 feet below a stump, N. 51¾ W. 42½ to a stake on a north hill-side in the edge of a field, S. 29 W. 30 poles to a small planted locust on a high ridge, a corner to Whitely's land; thence with his lines S. 58½ W. 43 poles to a sugar-tree in a hollow, S. 48 W. 85½ poles to a rock in a deep hollow, a corner to George Scott's land; thence with his lines S. 20 W.
200 poles to a stake in a field about 2½ poles from the fence,
112 leaving the 1,040-acre survey, and with a 630 acre survey made for Charles Campbell, S. 80 W. 60 poles to three dogwoods, 6 poles east of a cabin and 1½ poles S. E. of a large poplar, leaving the 630 acres with the lines of a tract of land sold to Tho's L. Preston by James Sanders, still with Scott's lines N. 23 W. 158 poles to a stake where three fences join on the north side of a hill; marked some pointers with Sanders' line S. 62½ W. 95 poles to a large black-oak stump on the south side of a ridge 3 poles from the top by a fence; marked pointers S. 52¼ W. 99 poles with a line of a recent survey made by Mess'rs Stuart & Palmer, bounding with Ja's Sanders to a white oak & red oak on a west hill-side, S. 15 W. 17⅘ poles to a rock under a fence 3 poles & 5 links east of a branch, a corner to Charles Cleghorn, N. 41 W. 56 poles to a stake in Cleghorn's garden, 3 poles & 3 links from the S. E. corner of his house, N. 17 W. 41 poles to a rock about 18 feet east of a branch, N. 37¾ W. 38 poles to a rock in the branch, S. 70 W. 1 pole 7 links to a cucumber stump at the foot of a hill; thence with the lines of a 11-acre tract sold by Ja's Sanders to Tho's L. Preston, and with the lines of Bransons' land, N. 40 W. 24⅖ poles to a buckeye stump about 20 f't west of the middle of the branch; thence with Sanders' lines, N. 54¾ W. 16¼ poles to a sugar-tree 20 feet west of the middle of the branch, N. 69 W. 34⅘ poles to a beech on the side of a hill, N. 86 W. 27 poles to a stake on the
north edge of the old tram-road, about 18 f't east of a beech &
113 8 feet from a fence, N. 51 W. 63½ poles, crossing the river below the mouth of Cedar Branch, to a stake on the north bank 4⅕ poles below the abutment of the turnpike; thence up the river with its various courses, viz: N. 66½ E. 22 poles, N. 37½ E. 44 poles, N. 25½ E. 28 poles, N. 2¾ E. 47 poles, N. 71½ E. 19⅓ poles, N. 10½ E. 18 poles, N. 5 W. 56 poles, north 24 poles, N. 20 W. 10½ poles, N. 40½ W. 16 poles, N. 38½ E. 21 poles, N. 64 E. 22 poles, S. 77 E. 26 poles, south 82½ E. 24½ poles, to a poplar on the bank of the river, a corner to David McCready, and with his lines running the lines of a 90 acres survey made for Francis Preston, north 56 poles to a stake on the south side of the pine mountain near the foot, S. 72 W. 72⅘ poles to a small *kickory* on the side of the mountain, north 24 poles to a stake 5 poles east of a hollow, two poles east of a large rock; marked a pine pointer S. 71 W. 254 poles to a leaning chestnut-oak, and pointers on the side of the mountain, running the lines of a survey made for William King and afterwards conveyed to Francis Preston, S. 49½ W. 315 poles along the side of the mountain to a chestnut-oak stump, and pointers east of Hogston's mill, bearing N. 29 W. 6½ poles from a bridge which is on Cove Creek, S. 40 W. 20 poles, crossing the road and creek to a spruce-pine stump on the top of a cliff, S. 67 W 177 poles along a line of Robertson's land to a white oak & hickory, &p inters on the point of a spur about 12 poles east of a

hollow and six poles west of another hollow, with Robertson's lines, S. 39½ E. 79⅔ poles down the south side of the mountain to a stone on the west edge of a road near Crabtree's house, leaving the King sur-
114. vey, and with the lines of a 100-acre survey made for Francis Preston, S. 60 E. 60 poles to a sycamore near the river, S. 70 E. 57 poles, crossing the river to a stone on top of a cliff near some broken-top'ed sugar-trees; thence with a compromise line made between Preston & Robertson by Ja's Sanders, Benj. K. Buchanan, and Edward Lathim, S. 14⅓ W. 74 poles to a stone on the south side of a ridge, S. 67½ W. 101 poles to a stone on the side of a hill 10 feet north of a beech, the end of the compromise line; thence with the lines of a recent survey of 12½ acres, made for the s'd Palmer & Stuart, S. 53¾ W. 54 poles to a stone on a hill 3 poles and six links north of an apple-tree; thence with the lines of the King estate, S. 22 E. 26 poles to stone near the top of a hill, S. 59 W. 18 poles to a stone near the foot of a hill, S. 10 W. 24 poles to a stone in a marsh by a branch; leaving the entry of 12½ acres, and run the lines a 300-acre survey made for Alex. Outland, known as the Thompson survey, S. 69 W. 70 poles to a stone on a west hill-side 28 links S. E. of beech stump, near a gutter, on the side of a hill, S. 6 E. 103 poles, crossing a branch to a stone on a north hill-side near the top, S. 73½ E. 20 poles to a stone near the foot of a hill, S. 58½ E. 44 poles to a stone on the side of a hill 6 or 7 poles from the top; thence N. 48½ E. 126 to the beginning.

This survey includes the two recent entries made by Mess'rs Palmer & Stuart.

Completed Nov. 2, 1867.

Variation 2¼ east.

ISAAC A. McQ.

115	At Saltville	5,973 a.	1 r.	34 p.
	Arbaugh tract	190	1	20
Fullan		395	2	34
Mountain		227	3	16
		6,787	1	24
Including the entries		6,787	1	24
Entries		179	0	0
		6,608	1	24

And now, at another day, to wit, at a circuit court of the United States, contin'ed and held for the western district of Virginia, at Lynchburg, on Monday, the 22nd day of September, A. D. 1873, on the motion of the plaintiff, by his attorney, it is ordered that this cause be continued till the next term.

The following is a copy of a deposition taken on the 16th day of December, 1873, on behalf of the plaintiffs:

RICHMOND, V'A, *Feb.* 13, 1874.

CLERK OF THE CIRCUIT COURT OF THE U S.
For the Western District of Virginia:

DEAR SIR: It is agreed between the plaintiff and the defendant in the suit of John Preston, j'r, v. Stewart & Palmer, that the deposition of Gen'l

John S. Preston, recently taken de bene esse by the plaintiff and
116 returned to your office, may be opened by you, in order that the defendant may inspect the same and have a copy thereof made. Please, therefore, open the same.

JOHNSON & ROYALL,
Counsel for Plaintiff.
W. A. STEWART,
For himself & G. W. Palmer.

In the circuit court of the United States for the western district of Virginia.

JOHN PRESTON, PL'T'FF,
vs.
W'M A. STEWART & GEO. W. PALMER, DEF'TS.

DISTRICT OF EASTERN V'A, *ss:*

W'm L. Royall, being sworn, says that he is counsel and attorney of the plaintiff in the above-entitled cause; that he is advised and verily believes that the testimony of Gen'l John S. Preston, at present of the State of South Carolina, is material and necessary for the plaintiff in the prosecution of said cause; that the said Gen'l John S. Preston lives at Columbia, South Carolina, more than one hundred miles from Lynchburg, V'a, where the court at which this deponent expects said cause will be tried is appointed by law to be held. And this deponent further says that, as he is informed and believes, W'm A. Stewart & Geo. W. Palmer, the above-named defendants, reside at Saltville, in the county of Smyth, Virginia, about 300 miles distant from Richmond, Virginia, where the examination of the said witness is to be taken, and
117 that, as he is also informed and believes, no attorney for the said defendants reside' within one hundred miles of Richmond, Virginia.

E. C. MINOR,
Judge of the County Court of Henrico County, V'a.

Be it remembered that on the 16th day of December, 1873, W'm L. Royall personally appeared before me, E. C. Minor, judge of the county court of Henrico County, in the State of Virginia, and made oath that he, the said W'm L. Royall, was counsel for the plaintiff in a suit then depending in the circuit court of the United States for the western district of Virginia, wherein John Preston was plaintiff and W'm A. Stewart and Geo. W. Palmer were defendants; that the testimony of Gen'l John S. Preston, of Columbia, was material and necessary for the plaintiff in the prosecution of said suit, and that he, the said Gen'l John S. Preston, lived at Columbia, South Carolina, more than one hundred miles from Lynchburg, where the court at which the said deponent expected the said cause to be tried was appointed by law to be held; that W'm A. Stewart and Geo. W. Palmer, the above-named defendants, reside at Saltville, Smyth County, V'a, about 300 miles from Richmond, V'a, and that the said defendants have no attorney, as he believes, residing within one hundred miles of Richmond, V'a, and I was requested by the
118 said W'm L. Royall, in behalf of the said plaintiff, that the said General John S. Preston might be examined according to the directions of the act of Congress in such case made & provided; whereupon I ordered that the said General John S. Preston should examined before me de bene esse at Richmond, Virginia; and the said John Preston

appearing before me by his counsel, Johnson Royall, at Richmond, on this 16th day of December, 1873, I have therefore proceeded with the said examination, and the said General John S. Preston being carefully examined and cautioned, and duly sworn to testify the truth, the whole truth, and nothing but the truth, saith:

1st question by counsel for the plaintiff. Are you familiar with the estate known as the Preston Salt Works estate, in Smyth and Washington Counties, Virginia?

Answer. I am.

2nd question. Please state your name, age, and where you reside.

Answer. My name is John S. Preston. I am sixty-four years old, and reside in Columbia, South Carolina.

3rd. Please state whether you are the son of M'r's Sarah B. Preston, late of Washington Co., V'a?

Answer. I am.

119 4th question. Can you state whether there is a part of the said Salt Works estate known as Campbellsville? And, if so, describe its boundaries as well as you can, and its location with reference to the salt-wells.

Answer. There is a portion of the Salt Works estate generally known as Campbellsville. It was considered to be the northeastern portion of the Salt Works lands, north and east of the Holston River, and lies north of Walker's Mountain. I think the western boundary of Campbellsville is between two and three miles from the Salt Works.

5 question. Can Campbellsville be easily identified and marked out?

Answer. I think it can be easily identified. I reserved it in the sale of my interest in the Salt Works estate to Thomas L. Preston, because I had always considered it as the first tract of land purchased by my ancestor previous to acquiring the adjacent Salt Works lands.

6th question. State whether or not there was always a perfect understanding between yourself and Tho's L. Preston after the reservation you have spoken of that Campbellsville belonged to you.

Answer. There was.

7th question. Did Robert Gibboney, Tho's L. Preston's assignee and trustee, know before he sold the Salt Works estate to Stuart and Palmer of your claim and title to Campbellsville?

120 Answer. Between the year 1860 and the time of the sale to Stuart & Palmer, I frequently spoke to M'r Gibboney of the reservation and my claim to Campbellsville.

8th question. Was there any transaction between you and Gibboney by which you intended to release your claim to Campbellsville?

Answer. None that I recollect of. I don't remember of any from which he could pos'ibly infer my intention to make such a release.

9th question. Have you conveyed your interest in Campbellsville to your son John Preston, the plaintiff in this suit?

Answer. I have.

And further the deponent saith not.

JNO. S. PRESTON.

And I do further certify that the preceeding deposition was reduced to writing by me, and signed by the said John S. Preston, and that I am not of counsel or attorney for either of the parties to the said suit, nor am I interested in the event thereof.

E. C. MINOR,

Judge of County Court of Henrico Co., Virginia.

Exceptions to foregoing deposition on the part of the def'ts.

121 First exception to sixth question & answer, because enquiry is made and answer given in regard to "understandings" between the witness and Tho's L. Preston, outside of the written agreement between them, which understanding can in no wise be evidence in this cause against the def'ts.

Se'ond exception to seventh question and the answer thereto as irrelevant, and to the eighth question and answer on the same ground.

And now, at another day, to wit, at a circuit court of the United States, held and continued for the western district of Virginia, at Lynchburgh, Thursday the 26th day of March, A. D. 1874, ordered, that this cause be continued till the next term.

The following is a copy of depositions taken for the plaintiff:

In the circuit court of the United States for the western district of V'a.

PRESTON
vs.
STEWART & PALMER.

122 It is agreed between the parties to this cause that the deposition of Col. Tho's L. Preston may be taken before a notary public for the State of Virginia by the plaintiff without observance of the rules and forms required by the practice of the United States circuit courts, and that when so taken it may be read as evidence by the plaintiff upon the hearing of this cause in like manner as though it had been taken in strict conformity with the rules of practice of this court. And the plaintiff producing Gen'l John S. Preston to be cross-examined by the defendants, the said defendants waive all objection which they might make to the deposition of the said John S. Preston, taken in Richmond, V'a, before Hon. E. C. Minor, de bene esse, on the 10th December, 1873, and they expressly consent that the said deposition may be read by the plaintiff upon the hearing of this cause in like manner as though taken upon notice and in strict conformity with the practice of this court; but his said cross-examination is also to be read therewith. But the defendants reserve the right to make any lawful objection to the admissibility of the said Gen'l John S. Preston' testimony, and the defendants not having been present at the taking of the said Gen'l Preston's tes-
123 timony the plaintiff consents that the defendants may now endorse any exception upon his deposition which they might have endorsed if present at the taken of the same.

And it is hereby mutually agreed that either party to this cause may take any deposition in the cause before a State officer according to the practice of the State court, upon due notice having been given.

June 12th, 1874.

W'M L. ROYALL,
For John Preston, j'r.
KIRKPATRICK & BLACKFORD,
For Stuart & Palmer.

The deposition of Tho's L. Preston & others, taken by the plaintiff by consent at the office of Kirkpatrick & Blackford, in the city of Lynchburg, on the 12th day of June, 1874, to be read as evidence in the suit of Jno. Preston, j'r., vs. W'm Alexander Stewart, G. W. Palmer, et als., pending in the circuit court of the United States for the western district of Virginia.

Present: W. L. Royall, counsel for plaintiff, and Cha's M. Blackford, counsel for defendants, Stewart & Palmer.

JOHN S. PRESTON, being produced by the plaintiff for the cross-examination of the defendants, after being duly sworn, deposes as follows:

124 1st question by defendants' counsel. In the plaintiff's bill he speaks of a quantity of land, which under the agreement entered into between you and your brother, in 1847, was to be conveyed to you by your brother, Tho's L. Preston, in addition to the Campbellsville tract of which you speak in your examination-in-chief. Will you state how this additional quantity was to be laid off?

Answer. There were lands, a portion of those conveyed to Thomas L. Preston lying at the base and on the side of Little Mountain north of the Campbellsville tract and adjoining it. It was understood that the complement was to be made from those lands.

2nd question by same. How long since you were on these tracts of land to which you refer, I mean to the Campbellsville tract and the addition which was to be made thereto?

Answer. Certainly over twenty years.

3d question by same. Have you during that period exercised any rights of ownership over said lands; and, if so, what?

Answer. I exercised a joint ownership with my brothers after my mother's death, in 1846, until I sold my interest in the other portions of the Salt Works property to my brother Thomas in 1847. Afterwards I left the property in his hands, the title in me being always understood & acknowledged since his assignment to Robert Gibboney and the subsequent sale. I have sold the property to my son John Preston,

125 who is now the owner. I never cultivated the lands, and asked nor received rents for them. But as soon after the sale of the other portions of the Salt Works property as circumstances conveniently permitted, that is, after my return from Europe subsequent to the war, I sold the land, as I have stated.

4th question by same. Have you not been a large beneficiary under the deed from Tho's L. Preston & wife, dated August 30, 1847, made to secure you, a copy of which, marked "D," is filed with the plaintiff's bill?

Answer. I held a large amount and a variety of claims on the Salt Works property; among them was the claim under the deed referred to. I have received various payments on these claims in goods without charging them to any special one. To this extent I have received legal benefit from the security of this deed.

5th question by same. So far as the deed aforesaid remains unsatisfied, have you not assigned its benefit to other parties?

Answer. I have.

6th question by same. From what source did your brother, M'r Tho's L. Preston, derive the lands out of which it was proposed to make up the 500 acres to be conveyed to you as alleged in the bill?

Answer. Under the will of my mother, Sarah B. Preston.

126 And further this deponent sayeth not.

JNO. S. PRESTON.

Co'l THO'S L. PRESTON, being next duly sworn as a witness for the plaintiff, deposes as follows:

1st question by plaintiff's counsel. Are you the son of M'r's Sarah B. Preston, and the same person of your name who is mentioned in her will?

Answer. I am.

2nd question by same. Is there a part of the landed estate that you were in possession of when you owned the Salt Works in Smyth County?

Answer. There is.

3rd question by same. Can Campbellsville be marked off from the rest of the Salt Works property easily & distinctly?

Answer. It can.

4th question by same. Did you make an agreement, as claimed by the plaintiff in this suit, in the year 1847, to convey the tract called Campbellsville to Gen. Jno. S. Preston?

Answer. I did.

5th question by same. State whether or not you ever communicated to Robert Gibboney, the person to whom you conveyed your estate in trust for the payment of your debts, the fact that you had made such an agreement?

Answer. I did at the time the deed of trust was made, and
127 subsequently furnished him a copy of the agreement between Jno. S. Preston & myself, taken from the records of Smyth County.

☞ EXCEPTION.—The defendant, by counsel, excepts to the foregoing question & answer, on the ground that they are irrelevant to the matter at issue in this suit.

6th question by same. Can you state whether or not Gibboney was aware of the locality of the tract called Campbellsville?

Answer. I cannot.

7th question by same. State whether or not this tract called Campbellsville was well known in your family by that name, and, if so, had it been well known by that name for any considerable period of time prior to 1860?

Answer. It was always known in the family as Campbellsville, and spoken of by that name. It had been known by that name in the family from my earliest recollection.

8th question by same. State whether or not it was so well by that name as that any one knowing of the tract itself would have been likely to know of it by that name.

Answer. I cannot state how far others know how this tract of land was designated by the family.

☞ EXCEPTION.—Defendant, by counsel, excepts to so much
128 of the foregoing question & answer as refer' to the understanding in the family in regard to the Campbellsville tract, such understanding in no wise affecting the matter in this suit.

9th question by same. State whether or not the Salt Works estate was one solid and compact body of land, consisting of a single tract held under a single title, or was what would have been generally known as the Salt Works estate or property, composed of a variety of tracts held under a separate title for each.

Answer. It was composed of a variety of tracts held under a variety of titles. The Salt Lick tract, upon which was situated the salt wells & works, was an original patent for a tract of land of about three hundred & ninety acres. The other tracts of land were either original patents or derived by purchase from various individuals.

10th question by same. In your mother's will, in the 2nd clause thereof, there is a piece of property spoken of as "my Salt Works estate;" what did you and the other two devisees under her will construe this language as referring to?

☞ EXCEPTION.—Defendant, by counsel, excepts to the foregoing question as irrelevant and illegal, the construction which may have

been put upon the will of M'r's Preston by the devisees thereunder not being a matter which can in any way affect the interest of the defendants, Stewart & Palmer.

Answer. I cannot say what the others construed it to embrace;
129 regarded it as embracing, first, the Salt Lick tract referred to above, and, second, to the lands contiguous thereto.

11th question by same. State whether or not Campbellsville was held under a title separate and belonging solely to itself.

Answer. It was not held under the same title as the Salt Lick tract, but by a title separate to itself.

12th question by same. State whether or not Campbellsville belonged to your mother at the time of her death.

Answer. It did.

13th question by same. How had she acquired it?

Answer. I cannot state positively, but, to the best of my recollection, by descent, either from her brother, who died before he was of age, or from her father, or it may have been one of the tracts entered and patented for her benefit. The title-papers themselves, delivered to the defendant Palmer, will show.

14th question by same. Was Campbellsville considered by you and your brothers to have passed to you under your mother's will as part of the real estate devised by that will, and was there ever any question raised among you as to this matter? Did you ever hear of any one else raising a question as to this matter?

☞ Excepted to by defendant, by counsel, on the grounds set forth in the exception to the 10th question.

130 Answer. It certainly was considered to have so passed by us. There never was a question raised among us as to this fact. I I never heard of any one raising a question about it.

15th question by same. Did you, at the time you made your conveyance to Gibboney, own any tracts of land so situated in respect to the Salt Works estate as that they could be spoken of as adjoining it, not devised by your mother?

Answer. I did. I do not remember distinctly how many tracts there were if more than one, but recall distinctly that tract I purchased from James Sanders, which was nearly surrounded by the land devised by my mother to her three sons. The tract contained less than one hundred acres. I don't remember that I owned any other such tracts.

16th question by same. Will you state whether or not your mother owned any land on the south of Walker's Mountain not devised by her will to yourself & two brothers?

Answer. She did own large tracts of land on the south side of Walker's Mountain not devised to her sons.

17th by same. Be good enough to append a diagram to your deposition which will show the general location and boundary lines of the Salt Works estate, the position of Walker's Mountain, the posi-
131 tion & course of the Holston River, & the position & boundary-lines of Campbellsville?

N. B.—The witness here produced a paper, filed herewith and marked "Preston vs. Stewart & Palmer, X 14, Ex. Z," with Tho's L. Preston's deposition, and stated that this diagram does not pretend to be accurate, but only shows the relative positions of the points indicated.

18th question by same. Would you consider Campbellsville so situated in respect to the Salt Works as to make it a convenient, useful, or advantageous appurtenant thereto?

☞ Excepted to by counsel for defendant on ground that it asks the

opinion of the witness in regard to the construction of a devise in the will of M'r's Preston?

Answer. I would.

19th question by same. Can you state whether or not there is a plaster bank or deposite on Campbellsville?

Answer. No such deposite or bank has ever been developed, but the line of deposite of plaster passes directly through it, and plaster has been found both east & west of it.

20th question by same. Will you state how Campbellsville lies in respect of the salt-wells?

Answer. It lies northeast, and is from two to two & a half miles
132 from the wells. All the land between the wells and Campbellsville was embraced in the devise from my mother to her three sons. It lies north of Walker's Mountain and on the north side of Holston River, and between the Holston River and the line along the south side of little Piney and Bushy Mountain. The eastern boundary was the dividing-line between the lands of McCready & those formerly owned by M'r's Preston.

Cross-examined by counsel for defendants:

1st question by defendants' counsel. Was not the property to which you refer in your answer to the 9th question as being made up of various tracts of land the same as is described in your mother's will as the Salt Works estate?

Answer. Yes. The Salt Works estate and what is meant by that term is more succinctly and distinctly described in the devise than I could make it by any change of phraseology, and to this I refer as my answer to this question.

2nd question by same. Was the tract of land you designate as Campbellsville known and recognized by that title by the people in the vicinity thereto, other than the members of your family?

Answer. I cannot answer this question more definitely than I did my answer to the 8th question above. The family knew it as Campbellsville; by what name others knew it, I am not able to say, as I
133 was not a resident in the neighborhood until 1845.

3rd question by same. From 1845 until you left the Salt Works, by what name was this tract designated by the people in the neighborhood?

Answer. I have no recollection of its being designated by any particular name. If called by any other name than Campbellsville I do not remember it. Many years before I went to the Salt Works to reside, the body-servant of my grandfather, who was called John Broady, was put upon this place to reside and cultivate free of rent. He always designated his home as Campbellsville, and resided there until his death. Some time after his death his family were removed to another tract, devised by M'r's Preston to her sons, at the northern base of Walker's Mountain. From his long residence upon the place the people of the neighborhood may have forgotten the name by which the tract was known in the family, and called it the residence of Broady, or Broady's Bottom. I always myself knew it and designated it as Campbellsville. My impression is that the tract was derived from my mother's ancestor, named Campbell, and called by my mother after him Campbellsville.

4th question by same. For several years prior to your leaving the Salt Works in 1858, was not this place called generally by the neighbors Broady Botton?

134 Answer. I am not aware that it was so called, though it may have been.

5th question by the same. Was the Campbellsville tract so distinctly marked, either by natural boundaries or by being conveyed or patented in a separate instrument, as to be easily & clearly defined in a deed conveying the same?

Answer. I think it was. In the contract between my brother, Jno. S. Preston, & myself, we understood Campbellsville to mean the tract of land lying north of the Holston River & between that & the line of the Preston property, on the south side of the Little Piney & Bushy Mountain, and if this area did not make five hundred acres, then so much more was to be added to it on the north side of the river as to complete that quantity. My impression is that the tract known as Campbellsville was separated from the other portions of the property owned by M'r's Sarah B. Preston, by the Holston River, & was bounded on the south by that river, & on the north by a line near or upon the base of the Little Piney or Bushy Mountain.

6th question by same. Was this tract acquired by your mother, or by those under whom she claimed, by a conveyance or patent for three hundred & fifty acres separate and distinct from the other tracts of which the property was composed?

Answer. My impression is that it was a separate & distinct
135 tract. I cannot state positively the number of acres embraced in it, but the title-papers delivered by M'r Gibboney to M'r Palmer will show definitely the amount of acres in the tract, and its location; as these papers constituted a part of the title-deeds to the entire body or various tracts of land of which it was composed when held by me were only examined so far as they touched the outside borders of a contemplated inclusive survey, and I do not, therefore, recall the corners & lines of this specific tract distinctly.

7th question by same. In the lease you made of the Salt Works property to Spencer, Ackerman & Co., was the Campbellsville tract included?

Answer. As my brother, Jno. S. Preston, to whom the tract belonged, left the management of it to me entirely, I made no specific mention or reservation of it in the lease. I do not recollect that I mentioned to them the fact that this tract belonged to another party.

Re-examined by plaintiff's counsel:

1st question. Did you own any property in 1847, when you made your covenant with J. S. Preston, adjoining the Salt Works, other than what was devised by your mother's will?

Answer. I did not.

136 And further this deponent sayeth not.

THO'S L. PRESTON.

The foregoing depositions were taken, subscribed, and sworn to before me at the time and place set forth in the caption.

FRANK ROANE,
Notary Public.

Exhibit Z, referred to in the foregoing deposition, here follows:

137 The following is a copy of depositions taken for the defendants, to wit:

Pursuant to notice, I, A. T. Starritt, a justice of the peace for the

county of Smyth, have proceeded, on this 14th day of July, 1874, at Saltville, V'a, at the depot in said county, to take the following depositions to be read as evidence for the def'ts in a case pending in the United States circuit court for the western district of Virginia, at Lynchburg, in which John Preston, j'r, is plaintiff, & W. A. Stuart & others are def'ts.

JOHN MONTGOMERY, a witness of lawful age and duly sworn, deposes and says:

1. Question by def'ts. Please state your age, place of residence, and occupation.

Answer. I am eighty years of age; I reside near Saltville, on the Broady farm, and I am a cooper by trade.

2. Question by def'ts. How long have you resided at or near Saltville?

Answer. I was born near Saltville, and have resided near that place all my life.

3. Question by def'ts. How long have you been living on the Broady farm?

Answer. Thirty-five years next November.

4. Question by same. Who resided on this Broady farm when you first went to live on it?

138 Answer. Old John Broady.

5. Question by def'ts. How long had John Broady lived on it before you went there to live?

Answer. I do not know how long, but I know that it was a long time.

6. Question by def'ts. How long did he continue to live there after you moved to the farm?

Answer. I do not know how long, but he lived there until he died, which I suppose was about twenty-five or thirty years ago.

7. Question by def'ts. You speak of residing on the Broady farm in your answer to def'ts' 1st question. Has that farm ever, in your recollection, had any other name? If so, state it.

Answer. Not that I recollect of.

8. Question by def'ts. Who resided on the Broady farm before Broady went there to live?

Answer. I think an old man named Evitt lived there.

9. Question by def'ts. Who lived there before Evitt?

Answer. An old man called Dump Lyon, who owned the place, and on whose death it went to his son, William Lyon, who sold it to Gen'l Frank Preston, the father of Jno. S. & & Thomas L. Preston. I think Evitt was the tenant of the Lyons.

(The above answer is excepted to by the pl't'ff. W'm L. Royall for pl't'ff.)

10. Question by def'ts. Which side of the river near Saltville is the Broady place, & how far is it from Saltville?

Answer. It is on the north side of the river, and not more than a mile and one-half, or perhaps two miles, to the nearest point

139 from Saltville, or the salt-wells.

And further deponent saith not.

his
JOHN + MONTGOMERY.
mark.

BRYANT A. HELTON, another witness, of lawful age, and duly sworn, deposes & says:

1. Question by def'ts. Please state your age, occupation, & place of residence.

Answer. I am fifty-three years old to-day. I am a farmer, and reside in Washington County, about six miles from Saltville.

2. Question by def'ts. Have you ever resided nearer to Saltville? If so, where?

Answer. I resided at Saltville for eight years, off and on, from 1839 to 1854.

3. Question by same. What was your occupation while you resided at Saltville, & in whose employ were you?

Answer. I was in various employments; under Tho's L. Preston, King & McCall, Trigg and Hunter, all of whom were in salt business at Saltville.

4. Question by def'ts. Was John Broady living during your stay at Saltville? If so, where did he reside, and what was the place called on which he resided?

Answer. John Broady was living a part of the time during my stay at Saltville. He lived on the northwest side of the North Fork of Holston River, about two miles from Saltville. The place where lived has always been called the Broady bottom since my recollection.

140 5th. Question by def'ts. Did you ever hear any other name for the place?

Answer. I never did.

And further deponent saith not

B. A. HELTON.

ANDREW CHAPMAN, another witness, of lawful age, and duly sworn, deposes and says:

1. Question by def'ts. Please state your age, occupation, and place of residence.

Answer. I will be sixty-eight years of age next October. I am a farmer, and live about five miles from Saltville.

2. Question by def'ts. Where were you born, & where have you since resided?

Answer. I was born at Saltville, and resided there (except nine years prior to 1819, when I was in North Carolina) until I moved to my present residence, twenty-three years ago.

3. Question by def'ts. Did you know John Broady in his life-time & up to the time of his death?

Answer. I did. I lived a part of the time close by him.

4. Question by def'ts. Where did he live when you lived near him?

Answer. He lived on the north side of the river, and I lived opposite, on the south side. He lived about two miles from Saltville.

5th. Question by def'ts. What was the place called where he lived?

Answer. It was called the Broady bottom.

141 6' question by def'ts. Did you ever hear it called by any other name?

Answer. I never heard it called anything else but once, and that was when the land was being surveyed, since the war, when M'r Thomas L. Preston, M'r W. A. Stuart, and a surveyor, M'r McQuown, I believe, were present on the Broady place. Mr. Preston then said it was called "Campbell's choice."

☞ (Excepted to by the plaintiff, because no statement by Thomas L. Preston at that time could have any influence or effect upon the plaintiff's rights, he (M'r Preston) having at that time failed, with all his interest in the estate. W'm L. Royal, for pl't'ff.)

7. Question by def'ts. Who lived on the "Broady-bottom" place before John Broady went there to live?

Answer. I do not know.

8. Question by def'ts. Were you ever present on any other occasion when the Salt Works lands were being surveyed? If so, state when.

Answer. I was. In the year 1844 I carried the chain around all the Salt Works land for Thomas L. Preston, when Abijah Thomas was surveying the Preston Salt Works lands.

9. Question by def'ts. What sort of a survey was Preston then having made of his Salt Works lands?

Answer. He wanted to know where his lands went. He had
142 Peter Johnson and Esquire Latham with him also. Latham was a surveyor.

10th. Question by def'ts. Do you remember whether it was called an "inclusive survey" by Preston & the others with him?

Answer. I do not know how that was.

11th. Question by def'ts. Was Preston surveying only the outer boundaries of his Salt Works estate?

Answer. He was.

12. Quest. by def'ts. Did he include in his survey the Broady-bottom land, or did he leave it out?

Answer. He included it.

13th. Quest. by def'ts. Did T. L. Preston say anything in your hearing then to show that he did not claim the Broady land?

Answer. I never heard him say anything about it.

14th. Quest. by def'ts.

(It is admitted here by the plaintiff, through his counsel, W'm L. Royall, that the place called in this deposition "Broady bottom" was held and occupied by Spencer, Ackerman & Co. and their successors from Jan'y 1st, 1859, until the 1st of Jan'y, 1869; the said Spencer, Ackerman & Co. being the firm to whom Thomas L. Preston leased the Preston & King Salt Works for the term aforesaid.)

15th. Question by def'ts. Were you ever employed by Thomas L. Preston while he occupied the Salt Works? If so, state about the time, & what you were engaged at.

143 Answer. I was employed by him in making a post-and-plank fence about his house in 1845 or 1846.

And further deponent saith not.

ANDREW C. CHAPMAN.

HENRY L. BRANSON, another witness, of lawful age, and duly sworn, deposes & says:

1. Quest. by def'ts. Please state your age, occupation, and place of residence.

Answer. I am forty-six years of age; I am a brick-mason by trade, and I reside near Saltville.

2d. Quest. by def'ts. How long have you resided near Saltville?

Answer. I have lived here most of the time since 1853. I have been absent about four years in all.

3d. Quest. by def'ts. Did you live on the Salt Works lands immediately before the war? If so, upon what part of the estate, and under what authority?

Answer. I did live on the Salt Works lands immediately before the war, on that part of the estate called the Broady place. I had leased the place of Spencer, Ackerman & Co., who claimed to be lessees of the Salt Works lands under Tho's L. Preston. My lease was for eight years, and began, I think, on the first of January, 1860?

4th. Quest. by def'ts. By what name was the place called in your lease?

Answer. My impression is that it was called the Broady place. I never heard it called anything else.

144 5th. Quest. by def'ts. Did you work any for Tho's L. Preston during your stay at Saltville? If so, for what period?

Answer. I commenced working for him, I think, in 1856, and quit when Spencer, Ackerman & Co. came, which, I believe, was in the fall of 1858.

And further deponent saith not.

HENRY L. BRANSON.

THOMAS E. GARDNER, another witness, of lawful age, and duly sworn, deposes and says:

1. Quest. by def'ts. Please state your age, occupation, and place of residence.

Answer. I am forty-seven years of age; I am a farmer, and I reside near Saltville.

2d. Quest. by def'ts. When did you first come to Saltville, & where have you since resided?

Answer. I came the first of Jan'y, 1856, and I have resided at the Salt Works until 1863, and in the neighborhood ever since.

3d. Quest. by def'ts. Were you during any part of that time in the employ of Thomas L. Preston? If so, state how long, and at what business.

Answer. I came here in the employ of Mr. Preston, and continued in his employ until the coming of Spencer, Ackerman & Co., which, I think, was in Dec'r, 1858. I came here to make a train-road from the

145 Salt Works to the woods. I was engaged at that until some time in the fall of 1856, and went as manager of the farm for Tho's L. Preston in the winter of 1856 or spring of 1857, and continued as farm-manager until the property was transferred to Spencer, Ackerman & Co.

4. Quest. by def'ts. While you were farm-manager for Mr. T. L. Preston, did you cultivate a place on the north side of the river, (north fork of Holston?) If so, what was the place called?

Answer. I cultivated a field on the north side of the river in 1858, which I knew as the Broady bottom.

5. Quest. by def'ts. From the time you came to Saltville to the present time, what has that place been generally called by others as well as yourself?

Answer. From the time I took charge of the farm I never heard it called anything but the Broady bottom.

6th question by def'ts. Did you ever hear of Jno. S. Preston, or John Preston, j'r, setting up any claim to said land? If so, when?

Answer. I never heard of any such claim until since the war. I do not recollect the year.

And further deponent saith not.

THOMAS E. GARDNER.

J. A. MCQUOWN, another witness, of lawful age, and duly sworn, deposes & says:

146 1st question by def'ts. Please state your age, occupation, and place of residence.

Answer. I am fifty-four years of age. I reside about fifteen miles from

Saltville, in Washington County, and I am county-surveyor of said county. I am also a farmer.

2d question by def'ts. Did you ever make a survey of the Preston Salt Works lands? If so, when & for whom?

Answer. I made a survey for Palmer and Stuart, and closed out in Dec'r, 1866.

3d quest. by def'ts. What quantity of land did you make in the Preston Salt Works?

Answer. Five thousand nine hundred and ninety-three acres.

4th quest. by def'ts. Was Thomas L. Preston present during said survey?

Answer. He was present a part of the time; I think about three days.

5th by def'ts. Was he present when you ran from the south side of the river to north side, and up the river?

Answer. He was.

6th quest. by def'ts. What line were you running when you crossed the river? Please refer to the map in your hand made out by you, & file the same with this deposition.

Answer. I was running a line of Humberson Lyon's three hundred and seventy acres, along the line from seven to six (7 to 6) on the accompanying plat.

147 7th quest by def'ts. When you reached the point 6, how then did you run?

Answer. We ran up the north bank of the river to a point intersecting the line A B on the map.

8th quest. by def'ts. As you ran this line up the river whose lands were on the right and left?

Answer. Sanders' land was on the right, and the Preston or Salt Works on the left, or north side of the river.

9th quest. by def'ts. Did Thomas L. Preston make any remark about the land on the north side when he crossed the river? If so, what?

(Excepted to by the plaintiff because no remarks or statements of Tho's L. Preston made at that time can affect this plaintiff. W'm L. Royall, for pl't'ff.)

Answer. He stated that the land was "Campbell's choice."

10th quest by def'ts. The map or plat you file embraces 570 acres & 150 acres of land in the name of Humberson Lyon. From what documents did you procure the courses? Please file copies of such documents with this deposition.

Answer. I got the courses from the patents of said land, issued by the Commonwealth of Virginia to Humberson Lyon, and I herewith file copies of the same, the first marked "W W" and the second "X X."

11th quest. by def'ts. In examining the titles to the Preston
148 estate did you find how a part of these Humberson Lyon tracts became attached to the Preston Salt Works lands?

Answer. They became attached to the Preston Salt Works by conveyance from W'm Lyon and wife to Francis Preston. A copy of which I herewith file, marked "T T."

12th quest. by def'ts. How much land of the two tracts patented to Humberson Lyon (150 & 370 acres) lies north of the river, as well as you can ascertain by a calculation from the map?

Answer. About two hundred and thirty acres.

13th quest. by def'ts. What name have you heard for the land on the north side of the river which M'r Preston called "Campbell's choice"?

Answer. I have heard it called "Broady bottom."

14th quest. by def'ts. How much of the Preston lands lie on the north side of the North Fork of Holston River?

Answer. Between seven and eight hundred acres.

15th quest. by def'ts. Is there any tract of three hundred & fifty acres on the north side of the river, or anywhere else on the Preston estate?

Answer. There was no such tract that I have seen in any of the title-papers to the Preston estate.

16th quest. by def'ts. How did you arrive at the outer boundaries of the Preston Salt Works estate?

Answer. I first took all the title-papers, and then made a con-
149 nected and inclusive plat, and then *then* ma le an actual survey of the outer lines,

And further deponent saith not.

ISAAC A. McQUOWN.

Taking of depositions adjourned till to-morrow morning, 6 o'clock, by consent of parties.

A. T. STARRITT, *J. P.*

WEDNESDAY, *July 15th*, 1874.

Taking of depositions resumed. Present, def'ts, & W. L. Royall for pl'ff; A. T. Starritt, J. P.

GEO. W. PALMER, another witness, of lawful age, & duly sworn, deposes and says:

1. Quest. by def'ts. Please state your age, occupation, & place of residence?

Answer. Am 45 years old. Farming & manufacturing of salt. Reside at Saltville, V'a.

2. Quest. by def'ts. When did you come to Saltville & how were you employed since you came?

Answer. Came to Saltville in August, 1858, to examine the Salt Works property. Moved my family here in November of the same year. Was a member of the firm of Spencer, Ackerman & Co., Palmer, Ackerman & Co., Stuart, Buchanan & Co., & Palmer, Stuart & Co., which firm held a lease of the Salt Works property for ten years, commencing on the first of January, 1869.

3d quest. by def'ts. Did you ride over the Preston Salt Works estate before leasing it? If so, who went with you?

150 Answer. Tho's L. Tho's Preston, Spencer, Harman Ackerman, and, part of the time, M'r Tho's P. McDowell were with us. We rode a good part of three days.

4. Quest. by def'ts. Were you shown a part of the estate called Broady bottom? If so, by whom?

Answer. We were shown Broady bottom on that occasion as a part of the Salt Works estate.

5. Question by def'ts. By whom were you shown Broady bottom?

Answer. By Thomas L. Preston.

6. Question by def'ts. Did Preston ride over that, as well as the other lands, or did you only see it from a distance?

Answer. He rode over it with us.

7. Question by def'ts. When did you first hear that John S. Preston, or Jno. Preston, j'r, had a claim to the Broady land?

Answer. I learned from John Preston, j'r, some time after the close of the war. He came to Saltville and enquired of me where Campbellsville was, and said that his father, John S. Preston, had a claim for 350 acres of land, known as Campbellsville, & enough more adjoining to make 500 acres.

8. Question by def'ts. Had you ever before heard of Campbellsville?
Answer. I had not.
And further deponent saith not.

GEO. W. PALMER.

151 STATE OF VIRGINIA,
County of Smyth, to wit:

I, A. T. Starritt, a justice of the peace, in and for the county aforesaid, in the State of Virginia, certify that the foregoing depositions were taken, sworn to, and subscribed by us, at the times mentioned in the caption, & in the presence of def't Stuart, & W. L. Royall, counsel for pl'ff.
Given under my hand this 15th day of July, 1874.

A. T. STARRITT, *J. P.*

Depositions of A. T. Starritt taken by consent at Musselwhite's shop, in Washington County, V'a, before me, Musselwhite, a notary public in and for said county, to be read as evidence for the def'ts in a cause pending in the U. S. circuit court for the western district of Virginia, in which John Preston, j'r, is compl't, & W. A. Stuart & others are def'ts.

The said A. T. STARRITT, being of lawful age, & duly sworn, deposes & says:

1. Question by def'ts. Please state your age, occupation, and place of residence.
Answer. I am forty-eight years of age; I am depot-agent at Saltville, and I reside at Laurel Fork, in Smyth County, about seven miles from Saltville.

152 2. Question by def'ts. Do you know of any locality called "Campbell's choice"? If so, state where it is.
Answer. When I came to this country, about twenty-six years ago, the place where old M'r's Campbell lived (at Laurel Fork, where I now reside) was called Campbell's choice.
3. Question by def'ts. Did you learn how long it had been so called, and did you ever hear any of the old people speak of it as "Campbell's choice"?
Answer. I do not know long it had been called Campbell's choice, but I heard old M'r's Campbell, who was living on the place when I came to that neighborhood, and other old people, call the place where Mrs. Campbell lived, at Laurel Fork, Campbell's choice. I also heard her sons, C. C. Campbell and A. H. Campbell, speak of it very often as Campbell's choice.
And further deponent saith not.

A. T. STARRITT.

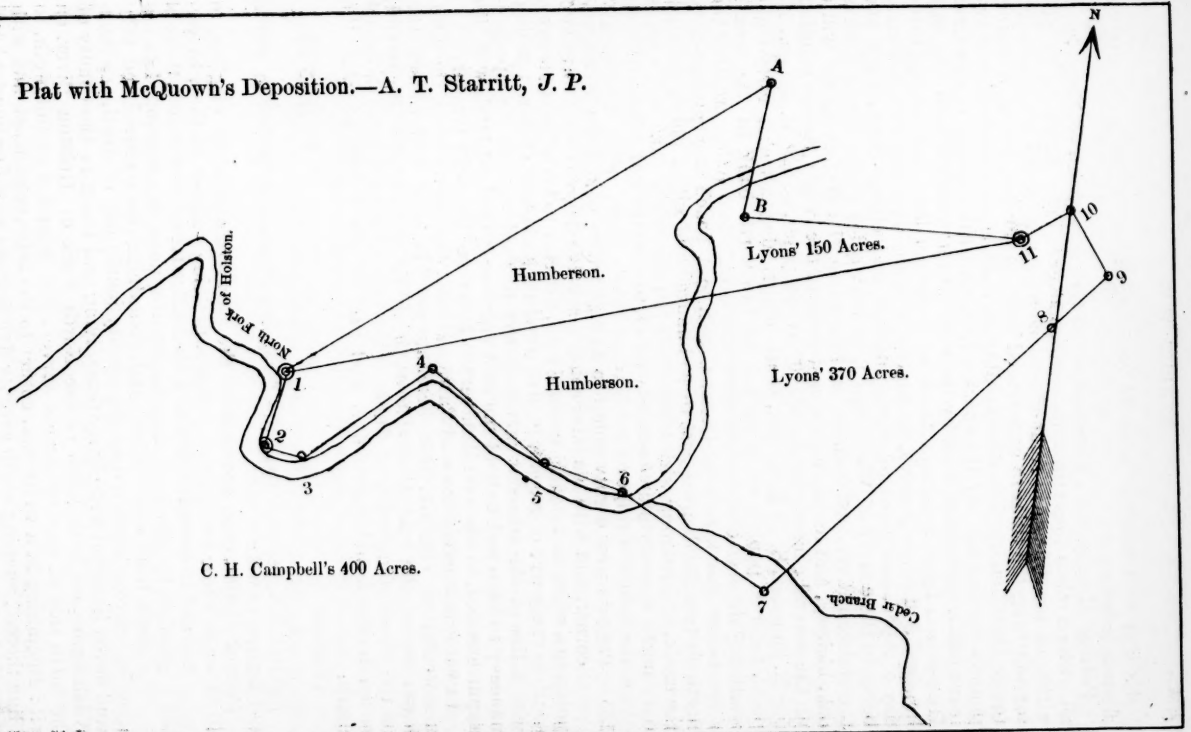
V'A, *Washington County, to wit:*

I, Worley Musselwhite, a notary public for the county aforesaid, in the State of Virginia, do certify that the foregoing deposition was taken, sworn to, and subscribed at the place named in the caption, by consent of def'ts, & W. L. Royall, counsel for pl'ff, on this 14 day of July, 1874.

WORLEY MUSSELWHITE, *N. P.*

153 The map referred to in the deposition of J. A. McQuown here follows:

Plat with McQuown's Deposition.—A. T. Starritt, *J. P.*



154 EXHIBIT WW.

Exhibit WW referred to in the foregoing depositions is in the words & figures to wit:

Patrick Henry, esqr., governor of the Commonwealth of Virginia, to all whom *whom* these presents shall come,greeting: Know ye, that by virtue of a certificate in right of settlement, given by the commissionors for adjusting the titles to unpatented lands in the districts of Washington & Montgomery, & in consideration of the ancient composition of two pounds sterling paid by Humberson Lyon into the treasury of this Commonwealth, there is granted by the said Commonwealth unto the said Humberson Lyon a certain trac*k* or parcel of land, containing three hundred and seventy acres, by survey, bearing date the twenty-fourth day of April, one thousand seven hundred and eighty-three, lying and being in the county of Washington, on both sides of the North Fork of the Holston River, and bounded as follows, to wit: Beginning at a white oak, hickory, and locust, on the east bank of the river; thence running up the several course' thereof S. 10° W. 50 poles, S. 62° E. 36 po., N. 56° E. 96 poles, S. 43 E. 62 po., south eighty degrees east forty-eight poles, to three poplars on a branch on the north bank of the river; south 60° degrees east one hundred and twenty-two poles, crossing the river below the mouth of Cedar Creek, to a beach & cucumber-tree, north forty-eight degrees east three hundred and eight poles, crossing the creek, and running with Pike's lines to three white oaks and a black oak, north seventy-nine east forty poles, to a white and black oak, on the side of a ridge; then leaving Pike's lines, north twenty-five
155 degrees west eighty poles, to a large white oak, John Simmons' corner, and with his lines south sixty-five degrees west forty-two poles, to a white oak near Simmons' field, a corner to his adjacent survey, south seventy-five degrees west five hundred and eleven poles, running with a line of the adjacent survey to the beginning, with its appurtenances; to have and to hold the said tract or parcel of land, with its appurtenances, to the said Humberson Lyon and his heirs forever.

In witness whereof the said Patrick Henry, esq., governor of the Commonwealth of Virginia, hath hereunto set his hand and caused the lesser seal of the said Commonwealth to be annexed, at Richmond, on the twenty-fourth day of June, in the year of our Lord one thousand seven hundred and eighty-five, and *and* of the Commonwealth the ninth.

(Signed) P. HENRY.

Exhibit XX, referred to in the foregoing deposition, is in the words and figures to wit:

Patrick Henry, esq., governor of the Commonwealth of Virginia, to all to whom these presents shall come, greeting: Know ye that, by virtue and in consideration of a land-office treasury warrant, there is
156 granted by the said Commonwealth unto Humberson Lyon a certain tract or parcel of land, containing one hundred and fifty acres by survey, bearing date the twenty-fourth day of April, one thousand seven hundred and eighty-three, lying and being in the county of Washington, on both sides of the North Fork of Holston River, on the north side of this settlement survey, and bounded as followeth, to wit: Beginning at a white oak, corner to the settlement tract and with a line thereof, running south seventy-five degrees west five hundred and eleven poles, crossing the river to a white oak, *k*ickory, and locust, on the bank of the river, a corner to the settlement tract, on a spur of the

mountain, north fifty-three degrees east three hundred and eighty poles, running under the Piney Mountain to a black oak, south eight degrees west ninety-two poles, crossing the river, and running to a white oak, east two hundred north, to the beginning, with its appurtenances; to have and to hold the said tract or parcel of land, with its appurtenances, to the said Humberson Lyon and his heirs forever.

In witness whereof the said Patrick Henry, esq., governor of the Commonwealth of Virginia, hath hereunto set his hand, and caused the lesser seal of the said Commonwealth to be affixed, at Richmond,
157 on the second day of Dec'r, in the year of our Lord one thousand seven hundred and eighty-five, and of the Commonwealth the tenth.

(Signed) P. HENRY.

Exhibit TT referred to in the foregoing depositions is in the words and figures following, to wit:

This indenture, made and concluded on between William Lyon and Marg'ret, his wife, of the one part, and Francis Preston, of the other, all of the county of Washington and State of Virginia, witnesseth: That the said William Lyon and Marg'ret, his wife, for and in consideration of the sum of fourteen hundred dollars to them in hand paid, the receipt whereof they do hereby acknowledge, they have bargained and sold, & by these *prences* do bargain, sell, and convey one tract or parcel*l* of land lying in Washington County aforesaid, on the north side of the North Fork of Holston River, containing two hundred a*r*ces, be the same more or less, being the land allotted to the William Lyon by a devision of the estate of his father, Humberson Lyon, deceased, and bounded as follows: Beginning at a hic'ory, locust, and white oak on the north bank of the river, running up the several courses thereof
158 four hundred and seventy poles to three small sycamores on the bank of the same, north forty-five west fifty-nine poles to a hic'ory by the edge of a field, north ten west ninety poles, to a black oak, north fifty-two west thirty-eight to two poplars on a steep hill-side, south fifty-two poles west three hundred and three, to the begin'ing; with all its appertenances; to have and to hold the said tract or parcel*l* of land, to the said Francis Preston and his heirs forever; and the said William Lyon, and Marg'ret, his wife, doth warr*e*nt and defend the right and title of the same from all and every person or persons laying claim thereto from all encumbrances thereon to the said Francis Preston, his heirs and assigns forever.

As witness our hands and seals the twenty-second day of April, one thousand eight hundred and one.

WILLIAM LYON. [SEAL.]
MARG'RET LYON. [SEAL.]

Signed, sealed, & delivered in the presence of—
JA. BAKER.
GENARD T. CONN.
JOHN ARMSTROMG.

The Commonwealth of Virginia to H. D. Poston, gentlem*e*n justice, greeting:

Whereas William Lyon and Marg'ret, his wife, by their certain indentures of bargain and sale, bearing date 22d day of April, 1801, have sold and conveyed unto Francis Preston two hundred acres of
159 land, with the appertenances, lying and being in the county of

Washington; and whereas the said Marg'ret cannot conveniently travel to our district court, held at Washington Court-House, to make acknowledgment of the said conveyance; therefore we do give unto you, or any two or more of you, power to receive the acknowledgment which the said Marg'ret shall be willing to make before you of the conveyance aforesaid contained in the said indenture, which is hereto annexed. And we do therefore command you that you do personally go to the said Marg'ret and receive her acknowledgment of the same, and examine her privily and apart from the said William Lyon, her husband, whether she doth the same freely, voluntarily, without his persuasion or threat, and whether she be willing that the same should be recorded in our district court aforesaid. And when you have received her acknowledgment & examined her as aforesaid, that you distinctly and openly certify us thereof in our said court, under you' seal, sending then there the said indenture and this writ.

Witness Andrew Russell, clerk of our said court, the 21st day of November, 1804, in the 29th year of the Commonwealth.

ANDREW RUSSELL.

WASHINGTON COUNTY, *to wit:*

Pursuant to a commission from Wash. district court to us directed, we have proceaded to examine Marg'ret, wife of William
160 Lyon, privily and apart from the said William Lyon, her husband, and do hereby certify the said court that the said Marg'ret did, in our presence, declare that she willingly signed and sealed the writing hereunto annexed, which was then shown and explained to her by us, and consented that the same should be recorded.

Given under our hands and seal this the 3rd day of December, 1825.

[SEAL.] H. D. POSTON.

VIRGINIA.—At a district court held at Washington Court-House the 6 day of October, 1802, this indenture of bargain and sale was proved in court by the oaths of Jacob Baker, Genard T. Conn, & John Armstrong, the witnesses thereto, to be the act and deed of the within-named William Lyon, and ordered to be recorded.

Teste:

ANDREW RUSSELL, *C. D. C.*

And now at another day, to wit, at a circuit court of the United States continued and held for the western district of Virginia, at the court-house thereof, in the city of Lynchburg, on the 23rd day of September, 1874, this cause was this day heard on defendant's demurrer to the bill of the plaintiff, and, after argument of counsel, the court took till to-morrow morning to consider of the same.

And now at another day, to wit, at a circuit court of the United States continued and held for the western district of Virginia, room thereof in the city of Lynchburg, on the 25th day of September, A. D. 1874, this cause came on this day to be heard upon the bill and
161 exhibits filed therewith, the answer of the defendants, W'm A. Stewart and G. W. Palmer, and the exhibits filed therewith, and the replication of the plaintiff thereto, the depositions as well of the plaintiffs as of the defendants, the various arguments of counsel, and the demurrer of the defendants, Stewart & Palmer, to the plaintiff's bill, in which demurrer the plaintiff joined, which said demurrer having been set down for argument, was argued by counsel, upon consideration whereof the court sustained said demurrer for reasons assigned in writ-

ing and filed with the papers in this cause marked "H. L. B," and hereby made a part of this decree, which reasons are in the following words and figures:

"This is a bill, it seems to the court, for the specific performance of a covenant entered into between John S. Preston and Thomas L. Preston respecting the title to a piece of land. It sets out the covenant and alledges the possession of the tract of land in the defendants, Stewart & Palmer, under title from the defendant, Tho's L. Preston, and asks the court not to compel Tho's L. Preston to perform specifically his covenant, but to put the complainant in possession of the tract which was the subject of the covenant. We say it is a bill for the specific performance of this covenant, for if it is not, then we are at a loss to know what its character is, for it cannot be a bill for discovery, for there is no privity of contract or relationship at all between the compl't and the def'ts Stewart & Palmer.

162 "Now the bill nowhere alledges that the complainant is remediless at law, and, if it did, the facts admitted at bar contradict that allegation. The bill does not charge that Tho's L. Preston ever refused to perform his covenant; on the contrary, it is asserted by counsel that he is ready to so do; nor does the bill alledge that John S. Preston ever performed his part of the contract for which the covenant is the consideration, or that he is ready to perform it, which are fatal defects upon demurrer to a bill for specific performance. And if it be said that this bill does not ask relief against Thomas L. Preston, who by his failure to answer admits all it charges, then it seems to us that the case made by the bill is one which asks the court to compel Stewart and Palmer, the defendants, to specifically perform a covenant to which they were not parties when the real covenantors do not object so to do, and that, too, when Stewart and Palmer, as the bill alledges, set up a title which the bill does not negative. From all that appears in this bill the remedy of the compl't is at law. He has but to ask the covenanted deed from Tho's L. Preston, and if he finds parties in possession of the land conveyed, he has his by ejectment at law. We think the demurrer must be sustained."

And thereupon, upon motion of the plaintiff by his counsel, leave was given him to amend his bill upon payment of the costs of the said

163 defendants, Stewart and Palmer, incurred up to this time, which was accordingly done. And the plaintiff having made John S. Preston a party defendant to his said amended bill, W'm L. Royall, for said John S. Preston, waived service of process to answer said amended bill, and, by his consent, this cause was set for hearing as to the said John S. Preston, and thereupon leave was given the said W'm L. Royall to file the answer of said John S. Preston, which was accordingly done. And the said Stewart and Palmer, by their counsel, Kirkpatrick & Blackford, waiving service of process to answer the plaintiff's amended bill, and consenting thereto, this cause was set for hearing as to them. And the defendants, Tho's L. Preston, Arthur C. Cummings, and James C. Campbell, waiving service of process to answer plaintiff's amended bill by their counsel, W'm L. Royall, this cause, by his consent for them, was docketed as to them.

And thereupon the defendants, W'm A. Stewart and G. W. Palmer, filed their answer to the plaintiff's amended bill, which the plaintiff waived an oath to, and consented to accept with the signature of their counsel thereto, to which the plaintiff replied generally. And thereupon this cause coming on again to be heard upon the papers formerly read, the plaintiff's amended bill & the answers of John S. Preston, W'm

A. Stewart, & G. W. Palmer, to said amended bill and the plaint-
164 iff's replication thereto was argued by the counsel, upon consideration whereof the court is of opinion that the plaintiff's bill & amended bill be dismissed, and doth therefore adjudge, order, and decree that the plaintiff's bill & amended bill be dismissed, with costs.

And upon the prayer of the plaintiff, in open court, an appeal is allowed him to the Supreme Court of the United States upon the plaintiff or some one for him executing a bond in the penalty of $500 conditioned according to law.

The demurrer referred to in the foregoing decree is in the words and figures following, to wit:

In the circuit court of the United States for the western district of V'a.

The demurrer of W'm Alex. Stuart & G. W. Palmer, defendants to a bill of complaint of John Preston, j'r.

These defendants, by protestation not confessing any of the matters in the said bill of complaint contained to be true as the same are therein set forth, do demur to the said bill, & for causes of demurrer show:

1. That the said complainant hath not by his said bill made such a case as entitles him in a court of equity to any discovery or relief from or against these defendants touching the matters contained in the said bill.

2. Because John S. Preston is not made a part' to said bill of complaint.

165 3. Because the claim of the said pl'ff in his said bill set forth and the relief therein asked are so uncertain and indefinite that a court of equity cannot enforce it.

4. Because the pl't'ff in his said admits and states that the 500 acres which he therein prays shall be laid off and allowed to him *one* at this time in the possession of these defendants, who claim that they belong to themselves, claiming, as he (the pl'ff) is informed, that the same was conveyed to them by Robert Gibboney by consent of John S. Preston, given before he executed the deed for the same land to the pl'ff, and yet said pl'ff in his said bill nowhere negatives or denies in any way the claim which he thereby admits is made by these def'ts.

5. Because said pl'ff, by his said bill, claims and asks that these def'ts shall be required to deliver to him the possession of 500 acres of land, which, he says, are part of a larger tract of land known as the Salt Works tract, which claim, said pl'ff says, is based on a contract or covenant made between his (the pl'ff's) grantor, one John S. Preston and one Tho's L. Preston, (under whom the pl'ff shows said defendant's claim to own said larger tract known as the Salt Works estate,) and by which contract or covenant the said John S. Preston agreed & covenanted to convey to said Tho's L. Preston his one-third interest in said larger tract, and in part consideration therefor said Tho's L. Pres-
166 ton covenanted & agreed to convey to said John S. Preston said smaller tract of five hundred acres; and yet complainant nowhere in his said bill avers that said John S. Preston ever did convey, or offer to convey, or was ever ready & willing to convey, or is now ready & willing to convey to said Tho's L. Preston, or to those claiming under him, the said larger tract of land known as the Salt Works estate when or if the said Tho's L. Preston or those claiming under him shall convey to said complainant the said smaller *the* tract of 500 acres of land.

Wherefore, and for divers other good causes of demurrer appearing in said bill of compl't, these def'ts do demur to the said bill, and to all the matters & things therein contained, and pray the judgment of this honorable court whether they shall be compelled to make any other or further answer to the said bill. They humbly pray to be hence dismissed with their reasonable costs in this behalf sustained.

STUART & PALMER,
By K. & B., *Atto's.*

Affidavit waived.

W'M L. ROYALL, *for Pl't'ff.*

The undersigned, attorneys and counsel for the defendants, Stuart and Palmer, hereby certify that the foregoing demurrer is, in our judgment, sufficient in law.

KIRKPATRICK & BLACKFORD.

167 The amended bill referred to in the foregoing decree is in the words and figures following, to wit:

In the circuit court of the United States for the western district of V'a.

To the hon. judges of the circuit court of the U. S.:

Complaining, sheweth unto your honors, John Preston, j'r, that he is a citizen of the State of South Carolina, and that heretofore he filed his bill in this cause making W'm Alex. Stewart, G. W. Palmer, Tho's L. Preston, Arthur C. Cummings, and James C. Campbell defendants thereto. He refers to said bill for the purpose of *of* having all the allegations contained therein considered as repeated herein, and he prays that said bill may be read and considered as a part of this. And now, by way of amendment thereto, he shows unto your honors that Tho's L. Preston cannot put him in possession of the tract of land which he covenanted to convey to John S. Preston, as is set out and described in his said original bill, nor can he execute any conveyance to your orator which will assi't him in his endeavor to obtain possession thereof by reason of the several deeds which the said Tho's L. Preston has executed, as set out and described in your orator's original bill, and the said Tho's L. Preston is wholly insolvent. Your orator prays that John S.
168 Preston may be made a party defendant hereto. The said John S. Preston is ready and willing to make such deed to Tho's L. Preston as the court may of opinion that his contract set out in the first bill calls on him for; and he is ready to perform every other part of said contract which the court should be of opinion is a condition-precedent to the relief sought by your orator.

Your orator shows unto your honors that the tract of land in controversy in this suit which the said Tho's L. Preston agreed to convey to John S. Preston is of a value exceeding two thousand dollars. Your orator would show further, that a large sum is still due and unpaid to John S. Preston under the deed of trust executed by Tho's L. Preston on the 30th day of August, 1847, to secure him the payment of $50,000, as set out in the first bill, and that both Conally F. Trigg and Arthur C. Cummings refuse to make any conveyance to him of the land in controversy, unless by order of a court of competent jurisdiction. Your orator shows unto your honors that John S. Preston never gave his consent by word or act to any conveyance of the 500 acres claimed to the defendants, Stewart & Palmer, or to any other person save your orator. Your orator is remediless at law, and cannot obtain relief save in a court of

equity. He therefore prays that all such relief as the facts of this case entitles him to may be decreed to him, and he will ever pray, &c.

W'M L. ROYALL, *p. q.*

169 Attached to the foregoing amended bill is an agreement made between W'm L. Royall, counsel for plaintiff, and Kirkpatrick & Blackford, counsel for defendants, of which the following is a copy:

It is agreed between W'm L. Royall, counsel for the plaintiff in the above-entitled cause, and Kirkpatrick & Blackford, counsel for Mess'rs W'm A. Stewart & G. W. Palmer, defendants therein, that the land in controversy therein is of a value greater than two thousand dollars. And it is further agreed between the same parties that unless the plaintiff obtain the signature & affidavit or legal acknowledgment of John S. Preston to the answer this day filed by W'm L. Royall as counsel for him, or a copy of said answer, and file said copy with the clerk of this court, that defendants Stewart & Palmer shall be at liberty to make the same objection to the plaintiff's bill at any stage in the process of an appeal in this cause that they could make for want of any answer whatever from John S. Preston.

W'M L. ROYALL,
for Plaintiff.
W'M A. STUART,
GEO. W. PALMER,
By KIRKPATRICK & BLACKFORD,
Their Att'ys.

170 The following is a copy of the answer of John S. Preston to the amended bill of the plaintiff, John Preston, j'r, to wit:

This defendant, John S. Preston, for answer to the plaintiff's amended bill, answers and says that he admits all the allegations thereof, and he says that he is willing to execute the deed to Tho's L. Preston which he agreed to execute to him by his contract of August 30th, 1847, set forth in the paper filed with the plaintiff's bill and marked "Exhibit B," upon the said Tho's L. Preston performing his part of said contract, which he understands was a condition-preceedent to this respondent being obliged to execute said deed or to make such a deed, and upon such terms and conditions as the court may be of opinion that his said contract requires; and, being fully answered, he prays to be hence dismissed, &c.

JOHN S. PRESTON,
By W'M L. ROYALL,
His Counsel.

The following is a copy of the answer of Stewart & Palmer to the amended bill of the plaintiff, John Preston, j'r, to wit:

In the circuit court of the United States, western district of Virginia.

The joint and separate answer of Geo. W. Palmer and W'm A. Stewart
171 to an amended bill filed at the September term, 1874, of the circuit court of the United States for the western district of Virginia, against them and others, by John Preston, j'r, in the chancery cause of Preston vs. Stewart & Palmer & others.

For answer to said bill, or so much thereof as they are advised to answer, your respondents, not waiving any exception which might be

taken to the said amended bill for its many defects and errors, refer and re-affirm the allegations and charges of their answer heretofore filed to the original bill in this cause, and pray that said answer, without being again set forth herein, be regarded as the answer to said amended bill so far as the same is pertinent thereto.

And, for further answer to said amended bill, your respondents, further answering, say that they deny the allegations of said amended bill that the said John S. Preston is ready and willing to make such deed to Tho's L. Preston as may be deemed necessary by this court, because your respondent alleges that *that* however willing the said John S. Preston may be to make a deed such as he has covenanted to make under the agreement filed as an exhibit with the plaintiff's original bill, he, the said Jno. S. Preston, is now insolvent, and is unable to make good his covenant of general warranty, as provided in said agreement of sale, and it is now uncertain whether the wife of said Jno. S. Preston, in view of his insolvency, will join in said deed even when made by said
172 Jno. S. Preston, should he so make it. Your respondents believe and charge that under the circumstances of this case the wife of said Jno. S. Preston will not now unite in said deed.

Your respondents further claim that it is the duty of said plaintiff, before the case be heard in this court, to file with his bill a duly executed deed from Jno. S. Preston & wife to said Tho's L. Preston, in accordance with the terms of his contract as set forth in Exhibit B, filed with the original bill of the plaintiff.

And, having answered said amended bill, your respondents pray they may be hence dismissed with their costs, &c.

W'M A. STEWART,
GEO. W. PALMER,
By Counsel.

I, S. Patterson, clerk of the circuit court of the United States for the western district of Virginia, at the city of Lynchburg, in said district of Virginia, do hereby certify the foregoing is a true transcript from the records & proceedings in a certain suit on the chancery side lately depending in said court, wherein John Preston, j'r, is plaintiff and Thomas L. Preston, James C. Campbell, Arthur C. Cummings, W'm Alexander Stewart, and George W. Palmer are defendants, with all things touching the same as fully and wholly as they now exist among the records of my office.

173 In witness whereof I have hereunto set my hand and affixed the seal of said court this 27th day of January, 1875, and of the Independence of the said United States the ninety-ninth year.

[SEAL.] S. PATTERSON,
C. C. Clerk.

Clerk's fee for transcribing this record, $50.

Addenda.—Answer of John S. Preston, with oath attached.

174 The answer of John S. Preston is in the words and figures following, to wit:

Circuit court of the United States for the western district of Virginia.

JOHN PRESTON, J'R, vs. STEWART & PALMER ET ALS. } Answer of John S. Preston.

This defendant, John S. Preston, for answer to the plaintiff's amended

bill answers and says that he is willing to execute the deed to Tho's L. Preston which he agreed to execute to him by his contract of August 30th, 1847, set forth in the paper filed with the plaintiff's bill and marked "Exhibit B," upon the said Tho's L. Preston performing his part of said contract, which, he understands, was a condition-precedent to this respondent being obliged to execute said deed, or to make such a deed, and upon such terms and conditions as the court may be of opinion that his said contract requires, and, having fully answered, he prays to be hence dismissed, &c.

JOHN S. PRESTON,
By W. L. ROYALL, *his Counsel.*
JOHN S. PRESTON.

175 Attached to the foregoing answer is the following certificate, to wit:

STATE OF MARYLAND,
City of Baltimore, ss:

I, William W. Latimer, a commissioner of the State of Virginia, residing in the city of Baltimore, State of Maryland, duly commissioned by the executive authority and under the laws of the State of Virginia, and authorized to administer oaths and affirmations, and to take the acknowledgment of deeds and other instruments of writing to be used and recorded therein, do hereby certify that on this day personally appeared John S. Preston, who, being duly sworn according to law, on his oath says that the matters and things set forth in the annexed and foregoing answer are true to the best of his knowledge and belief.

JOHN S. PRESTON.

Sworn to and subscribed before me, at Baltimore, this nineteenth day of October, A. D. 1874.

[SEAL OF COMM.] W. W. LATIMER,
A Commissioner for Virginia, residing in Baltimore City, Maryland.

A true copy. Teste:

S. PATTERSON, *Circuit Clerk,*
By F. W. RIVES, *his Deputy.*

176 CIRCUIT COURT OF THE UNITED STATES OF AMERICA,
Western District of Virginia:

JOHN PRESTON, J'R,
vs.
W'M ALEX. STEWART, GEO. W. PALMER, et als.

Know all men by these presents that we, John Preston, j'r, and Tho's L. Preston, are held and firmly bound unto the United States of America in the sum of five hundred dollars, to be paid to the said United States of America, heirs, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents, sealed with our seals, and dated this 20th day of November, A. D. 1874.

Whereas the above-named John Preston, j'r, hath prosecuted an appeal to the Supreme Court of the United States to reverse the decree rendered in the above-entitled suit by the circuit court of the United

States for the western district of Virginia: Now, therefore, the condition of this obligation is such, that if the above-named John Preston, j'r, shall prosecute his said appeal to effect, and answer all damages and costs if he shall fail to make good his plea, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

JOHN PRESTON, J'R, [SEAL.]
THO. L. PRESTON. [SEAL.]
[SEAL.]
[SEAL.]

Sealed and delivered in presence of—

Clerk.

A copy. Teste:

S. PATTERSON, *Clerk.*

(Indorsed:) No. . United States court, western district of Virginia. vs. Bond. Bond approved. Hugh L. Bond, c't judge. Filed Dec. 16, 1874. S. Patterson, clerk.

In our opinion John Preston, j'r, is good for the within bond.

BRADLY T. JOHNSON,
By W'M L. ROYALL.
W'M L. ROYALL.

(Indorsement on cover:) No. 65. John Preston, jr., appellant, vs. Thomas L. Preston, James C. Campbell, Arthur C. Cummings, John S. Preston, William A. Stewart, & G. W. Palmer. W. Virginia C. C. U. S. Filed 14th April, 1875.

REC. 65—6

In the Supreme Court of the United States

JOHN PRESTON, JR.
vs.
STUART, PALMER, ET ALS. } No. 65.

APPELLANT'S BRIEF.

WM. L. ROYALL for Appellant.

IN THE

SUPREME COURT OF THE UNITED STATES.

JOHN PRESTON, JR,
vs.
STUART, PALMER, ET ALS. } No. 65.

APPELLANT'S BRIEF.

In 1846, Mrs. Sarah B. Preston, of Washington county, Virginia, devised very large landed estates situated in the counties of Washington and Smyth, which adjoin each other, to her three sons Wm. C. Preston, John S. Preston, and Thos. L. Preston, subject to certain charges. These landed estates, because very valuable salt wells are situated at a certain point upon them, are known in the county round, and are devised by her as her "Salt Works estate." On the 30th August, 1847, John S. entered into a written agreement with Thos. L. to the effect that he would sell him his entire interest in the estate for $50,000, to be secured to him by a deed of trust upon the property. The agreement contained a further provision declaring that a part of the consideration for the sale was a covenant by Thos. L. that he would convey to John S. "a tract of land adjoining the Salt Works estate, containing about 350 acres, and known as the Campbellsville tract, and also a sufficient quantity of other lands adjoining the said tract to make up the quantity of 500 acres of land." [redacted]

This deed of agreement was duly acknowledged, and put upon record according to the Virginia statute. V. C., 1873, ch. 117.

On the same day Thomas L. Preston in part complied with his agreement by executing a deed conveying, as far as he was able, the aforesaid Salt Works estate to Connally F. Trigg, of Washington county, Virginia, in trust, to secure to John S. the aforesaid sum of $50,000; but he has never performed the other part of his agreement, to wit: conveying Campbellsville and enough land adjacent thereto to make 500 acres.

On the 25th day of April, 1848, Wm. C. Preston conveyed his entire interest in the aforesaid property to Thos. L. Preston for $25,000, and on January 7th, 1850, Thos. L. conveyed the same to Connally F. Trigg in trust to secure Wm. C. that sum. Connally F. Trigg removed from Virginia to Tennessee, and an order of court was made substituting Arthur C. Cummings as trustee in the deed to secure John S. his $50,000.

In the year 1859 Thomas L. conveyed his interest in this entire property to Robert Gibboney, in trust to sell and pay off Thomas L.'s creditors. Robert Gibboney made sale of the Salt Works estate to W. Alexander Stuart, Geo. W. Palmer, and Geo. B. Parker. Afterwards Robert Gibboney died, and James C. Campbell was substituted as trustee in the deed from Thomas L. to Gibboney. It does not appear that John S. Preston ever executed any conveyance of the property to Thos. L. Preston, unless the before-recited agreement of August 30th, 1847 (P. R. 8), amounts to a conveyance. Thomas L. seems to have considered that instrument as a sufficient conveyance. (See recital in his deed to Trigg, P. R. 11.)

In 1870 John S. Preston conveyed his interest in Campbellsville and the adjoining 150 acres to John Preston, Jr., a citizen of South Carolina, and this suit was brought to compel Stuart and Palmer—holding Campbellsville and the rest of the Salt Works estate under Gibboney's sale to them—to put the plaintiff in possession of Campbellsville and the additional 150 acres, and for such other relief as his case might warrant.

The plaintiff's bill made the case here stated. The defendants, Stuart and Palmer, demurred to and answered the bill. It was

taken for confessed as to all the other defendants. The cause came on for hearing upon the demurrer to the bill, upon consideration of which the court was of opinion, for reasons stated in writing, and to be found P. R. 63, that it should be dismissed.

It is useless to consider whether the reasons assigned by the court (save one, to be considered hereafter), were sufficient or not, as the plaintiff amended his bill by leave of the court, at once, making averment of all matters in which the court had thought his original bill deficient. And the cause again coming on to be heard, the court dismissed his bill and amended bill. The court had thought that the plaintiff's remedy was to ask Thos. L. Preston for the covenanted deed, and then to bring ejectment upon it. (As this objection is to the jurisdiction of the court, it is of course fundamental, and will have to be considered. Its consideration will be postponed until the case made by the plaintiff is considered.)

It had also thought an averment that John S. Preston had performed his part of his agreement with Thomas L., or was ready to perform it, to wit: the executing a deed to him for his interest in the Salt Works estate a necessary prerequisite. The court also thought the bill should contain an averment negativing the idea that John S. Preston may have given his consent to the title of Stuart and Palmer. Accordingly, the plaintiff's amendments showed that Thomas L. could not put him in possession of the land by reason of the fact that it was in the adverse possession of Stuart and Palmer, and that he could not make a deed conveying the plaintiff such a title as that he could institute an action of ejectment upon it, for the reason that he, Thomas L., had no part of the legal title in himself, having conveyed it all to Trigg and Robert Gibboney, and that the trustees in those deeds refused to execute any conveyance of the land unless first ordered so to do by a court of competent jurisdiction. The amended bill and John S. Preston's answer also showed that if the court should think it a condition precedent, the said John S. was ready to execute and deliver whatever kind of a deed the court should think him bound to execute. It also averred that John S. Preston never gave his consent by word or act to Stuart and Palmer's claim to Campbellsville. The error assigned by the appellant was the action of the court in dismissing

his bill and amended bill. It is impossible to assign error more specifically. But I will now proceed as briefly as I can to state my reasons for thinking the court erred.

The first point which I shall consider is whether or not the plaintiff's theory of his case was a sound one. The plaintiff thought that his claim to Campbellsville, having been put upon record according to the statute of Virginia, whoever purchased it must have done so with notice of his claim, and must hold it subject to be delivered to the plaintiff upon demand. V. C. 1873, ch. 114, § 5. It was suggested in the circuit court (and therefore I suppose will be contended here), that upon authority of the case of *Doswell* v. *Buchanan*, 3 Leigh, 365, the recording of a deed is not notice to a subsequent purchaser, and therefore Stuart and Palmer, having no actual notice of the plaintiff's claim, took the property *sine onere*. The case of *Doswell* v. *Buchanan* is not authority for that proposition, and I submit that the law in Virginia is the same as the law in every other State of the Union on this point, to wit: that the record is notice to all the world of those things which it is a purchaser's duty to examine the record for. In *Doswell* v. *Buchanan*, Hopkins made his deed of trust to secure Buchanan his money at a time when he had no title to the land whatever. He had simply an equitable claim upon it. This deed was recorded, it is true; but when Doswell came to purchase from him (Hopkins) he had acquired the legal title, and had put that on record. Now, all that the case decided was that a purchaser examining the record cannot be required to go back farther than the legal title. And this seems eminently just; for if a purchaser can be required to examine the record further back, after he has come to the title itself, where is the limit at which it can be said he is at liberty to stop? It would practically involve the necessity of examining every deed that the records contained. This, then, is all that *Doswell* v. *Buchanan* decided. It is true that in the very learned opinion delivered by Carr, J., there are some remarks made by him, which, taken by themselves, would seem to indicate it as his opinion that recording does not give notice. But those remarks must be understood as having been directed towards the case actually before him. He intended to treat of the recording

an equitable title, when the legal title was put on record subsequently. But even though such had been his opinion, it is one which has since been discarded by the Supreme Court of Appeals for the State of Virginia. See *Grœme* v. *Cullen*, 23 Gratt., 266; *Beirne* v. *Campbell*, 4 Gratt., 125; *McClanachan* v. *Siter et als.*, 2 Gratt., at pages 303–4; *Lucado* v. *Tutwiler*, Virginia Law Journal for March, 1877, p. 162, opinion of Christian, J., at p. 163. After these cases, there can be no doubt as to what the law upon this point is in Virginia. Therefore, when Stuart and Palmer came to purchase the Salt Works estate from Gibboney, it was their duty to examine the records to see what his title was. That examination would have showed them that his title came from Thomas L. Preston. Upon examining further, to learn what title Thomas L. had to convey, they would have learned that his mother devised the estate they were thinking of purchasing to Thomas L., John S. and William C. as joint tenants. They would then of course have been obliged to examine further to learn what right Thomas L. had to convey the interests of John S. and William C.; whereupon they would have found William C.'s deed conveying his interest in the property to Thomas L., and John S.'s covenant to convey his interest to Thomas L. But upon reading this covenant they would have learned that a part of the consideration which induced John S. to it, was Thomas L.'s covenant that he would make John S. a title to 500 acres of the estate. It is thus as clear as the noonday sun that when Stuart and Palmer purchased the Salt Works estate from Gibboney, they were under a legal obligation to read John S. Preston's claim for a part of it, and that they are held in law to all the consequences of having read it, whether they actually did so or not.

But it is maintained in their answer that if they had read it, it would have given them no notice that the covenant to convey Campbellsville, *adjoining* the Salt Works estate, was a covenant to convey *a part* of the Salt Works estate which they were buying. Now, they were of course obliged to read Mrs. Preston's will, as the foundation of Thomas L.'s title. That devises to her three sons her "Salt Works estate." The will then immediately proceeds to explain what is meant by that expression, as follows:

"embracing and including therein, as well the original and principal tract, containing the wells, as all the additions subsequently acquired, and all my lands of every description, whether cleared or wood land, either adjacent to, or in the vicinity of the Salt Works estate, in the counties of Smyth and Washington. This devise is intended to embrace all lands lying as above on the north of the summit of Walker's mountain, within such distance of the works as may make them convenient, useful, or advantageous appurtenances to the enjoyment of the estate, either for supplying wood or other products to the salt works, together with all mines, minerals, wells, furnaces, buildings or other fixtures, plaster banks and other appurtenances thereto whatsoever."

Now, when they read this, they were negotiating for the purchase of the large body of 7,000 acres of land, lying spread out in one tract in various directions from the salt wells. In reading it, it was necessarily suggested to their minds that the expression "my Salt Works estate" might mean one thing to one person or set of persons, and another to another. When the will says "I give and devise my Salt Works estate, embracing and including therein, as well the original tract, containing the wells, as all additions subsequently acquired," it was obviously suggested to the reader that Mrs. Preston knew there were some persons, who, when they spoke of "her Salt Works estate," meant the whole large body of separate tracts of which it was composed, while there were others, who, when they used that expression, meant only the original tract containing the wells.

(The original tract containing the wells contained only 390 acres. The other part of the 7,000 acres was made up of adjacent tracts of land purchased at different times—see deposition of Thomas L. Preston, 9th question and answer, p. 48—and the will on its face suggested this.)

Now, then, it was necessarily suggested to their minds that whoever understood "Mrs. Preston's Salt Works estate" to mean the original tract of 390 acres, containing the wells, must necessarily consider each one of the other tracts which bounded upon that as a tract "adjoining" the Salt Works estate. Knowing then that John S. Preston had a claim upon Campbellsville, "adjoining" the

Salt Works estate, and knowing that when John S. and Thomas L. entered into their agreement in 1847, they might each have been a person who understood "her Salt Works estate" to mean only the original tract, how could they be excused for not asking John S. "is your tract *adjoining* the Salt Works estate, one of those tracts *adjoining* the original tract which we are negotiating to purchase?" It was *crassa neglegentia* for them to have failed to do so. This was made overwhelmingly their duty when it is considered that Thomas L. Preston never owned any tract of 350 acres adjoining the Salt Works estate (and indeed never owned any tract at all, except one of less than 100 acres—see his dep. 15th q. and a., p. 49), not devised to him by his brother's will.

But again, supposing there were anything in the point, let it be noted that the covenant is not only one to convey Campbellsville, "adjoining" the Salt Works estate, but "*also a sufficient quantity of other lands adjoining the said tract to make up the quantity of five hundred acres of land.*" Now this is a covenant to convey Campbellsville, "adjoining" the Salt Works estate, and enough land "adjoining" Campbellsville to make 500 acres. Supposing they could be excused for not asking John S. Preston whether Campbellsville was a part of the Salt Works estate, how can they excuse themselves for not asking him whether the 150 acres additional were to come out of the Salt Works estate? And if they had made this inquiry of him, they would surely have been informed also of where Campbellsville was.

But again, Gibboney, Thomas L. Preston's trustee, who sold to Stuart and Palmer, knew of John S. Preston's claim to this part of the estate (see dep. John S. P., 7th q. and a., p. 45; dep. Thos. L. P., 5th q. and a., p. 48). Now it is settled law in Virginia that notice to a trustee of an encumbrance, is notice to those to whom he sells. *Beverly* v. *Brooke*, 2 Leigh, 425; *Eubank* v. *Kirk*, Va. Law Journal for July, 1877, 437.

All the depositions taken by the defendants were taken with a view to proving that the piece of land in controversy has never been known by the persons living near it as "Campbellsville." But how does this affect the matter? Knowing of John S. Preston's claim on a certain piece of land which they were bound to

suspect was a part of the property they were buying, it was their duty to learn from John S. Preston where the property that he and Thomas L. had agreed to call Campbellsville was situated. They were not to get their information from persons in the neighborhood, but from John S. Preston. The fact that people in the neighborhood had never heard this place called Campbellsville could not possibly affect John S. Preston's claim to it, when he and Thomas L. had agreed to call it Campbellsville, and had taken all proper precautions to let any one know who attempted to purchase that particular piece, that it was John S. Preston's. It was known in the Preston family, by every member of it, as Campbellsville, and when they described it by the only name by which they knew it, they had surely done all that prudent and reasonable men could be expected to do.

Next, the defendants seek to excuse themselves for not having read the Campbellsville covenant, because Thomas L. Preston's deed to Connally F. Trigg recites that John S. Preston had conveyed his interest in the estate to Thomas L., and because Thomas L.'s deed to Gibboney contained the same recital. But John S. was not a party to either of those deeds, and Thomas L. could not thus "recite" John S. out of his property. It was defendants' duty to hunt up the "recited" deed, when they would surely have come upon the covenant.

Again, they argue that John S. and his grantee are estopped by reason of having accepted money under the deed of trust to Gibboney, which purported to convey the entire property, and therefore authorized defendants to believe that it conveyed his interest. But as before remarked, John S. was not a party to that deed, and may not have known what it contained. But we will suppose that he did. Therefore, to prevent the very consequence urged by the defendants, he told Gibboney what was the same thing as to tell him that the deed was not right, to wit: that Campbellsville belonged to him. (See dep. John S. Preston, 7th q. and a., p. 45; dep. Thos. L. P., 5th q. and a., p. 48).

The defendants insisted in the court below that John S. Preston must make Thomas L. a deed for his interest under his mother's will, before Thomas L. could be compelled to perform his part

of the agreement. Accordingly John S. answered and offered, if the court should think a deed from him a condition precedent, to make such a deed as the court should think him bound to make. The defendants, Stuart and Palmer, say in their answer that he cannot get his wife to unite with him. Then, in case the court should think such a deed a condition precedent, the consequence would be that the defendants would be allowed to retain possession until he did get his wife to join in the deed. But that would not justify the decree that has been made; the decree should have been that, upon John S. Preston and wife executing a proper deed, the plaintiff should have the relief sought for, the defendants to remain in possession until a proper deed was made. But how, under the agreement between John S. and Thomas L., is it possible to say that the deed from John S. to Thomas L. was to be made before Thomas L. complied with his part of the bargain? Thomas L. was purchasing John S.'s interest in the estate. He was to pay him $50,000 and Campbellsville for it. Now, it surely has never been heard that when one man sells a farm to another, he is to make a conveyance of it before he is paid for it. Unquestionably the pay is to come first, the deed second. Obviously the agreement between them was that Thomas L. was to rest satisfied with John S.'s recorded covenant to convey, until he (Thomas L.) had paid John S. his $50,000 and conveyed him Campbellsville, when John S. would come under an obligation to make him a proper deed. But surely no obligation can rest upon John S. to convey his interest in the estate away until he has been paid what he agreed to take for it. He will not even be required to make a deed upon being put in possession of Campbellsville. That cannot be required of him until his $50,000 has been paid to him, all of which the amended bill shows to be still due.

A few words now upon the proposition of the court that the plaintiff should have asked Thomas L. for his covenanted deed, and brought ejectment upon it. The plaintiff had showed that in 1847 Thomas L. conveyed whatever part of the legal title was in him at that time to Connally F. Trigg in trust; that in 1848

William C. Preston conveyed his part of the legal title to Thomas L., and that in 1850 Thomas L. conveyed his equity of redemption and this latter part of the legal title to the same Connally F. Trigg, and that in 1859 he again conveyed his equity of redemption to Robert Gibboney in trust, and that these various trustees refused to make him (plaintiff) a deed, unless first ordered so to do by the court. Of what possible good, then, could a deed from Thomas L. to the plaintiff have been? He had nothing whatever to convey. The plaintiff could not have brought a suit in a court of law upon any title which Thomas L. could convey to him, because Thomas L. had no title to convey, and the trustees refused to make him a title. All, therefore, that it was possible for the plaintiff to do, was to ask a court of equity to have him a proper deed made; and after the court should have once taken jurisdiction of the subject matter for the purpose of having the deed made, it would not, of course, have turned the plaintiff out to bring an action of ejectment upon it, but having taken jurisdiction, it would have given him complete relief by adjusting the matters of mesne profits and putting the plaintiff in possession of the land.

But again: how could the plaintiff, by any possibility, have recovered the 150 acres additional at law? The interposition of a court of equity was absolutely indispensable here for the purpose of determining where that 150 acres was to be located, since the covenant itself had not determined where it was to be.

Respectfully submitted,

WILLIAM L. ROYALL,
for Appellants.

Addenda

For a collation of all the Virginia statutes relating to the recording of deeds as they affect the purchaser see 2 Minors Institutes p 882. et seq. and 2nd Vol Report of Revisors 1849 p 616. Note.

In the Supreme Court of the United States.

JOHN PRESTON, JR.
vs.
STUART & PALMER, &c. } No. 65.

Brief of Counsel for Stuart & Palmer.

THOS. J. KIRKPATRICK,
FOR APPELLEES.

In the Supreme Court of the United States.

JOHN PRESTON, JR., *vs.* STUART & PALMER. } No. 65.

BRIEF OF COUNSEL FOR MESSRS. STUART & PALMER.

This suit was instituted in the Circuit Court of the United States, for the Western District of Virginia, on the *8th day of January*, 1873. The bill seeks to have specific execution of a contract made on the *30th day August*, 1847.

A brief statement of the case will bring out all the points necessary to be noticed in the argument.

On the 27th day of July, 1846, the will of Sarah B. Preston was proved and admitted to record in the County Court of Washington county, Virginia. The 2d clause of her will is in the following words:

"2d. I give and devise to my three sons, William C. Preston, John S. Preston, and Thomas L. Preston, and to their several heirs forever, my Salt Works estate, embracing and including therein as well the original and principal tract containing the wells, as all the additions subsequently acquired, and all my lands of every description, whether cleared or woodland, either adjacent to or in the vicinity of the Salt works estate, in the counties of Smyth and Washington.

This devise is intended to embrace all lands lying as above on the north of the summit of Walker's Mountain, within such distance of the works as may make them convenient, useful, or advantageous appurtenances to the enjoyment of the estate, either for supplying wood or other products to the Salt Works, together with all mines, minerals, wells, furnaces, buildings or other fixtures, plaister banks, and other appurtenances thereto whatsoever.

Upon this devise of the Salt Works estate to my three sons, I charge them with the payment of eighty thousand dollars, upon the terms, in the manner, and with the conditions and limitations set forth in this will."

On the 30th day of August, 1847, John S. Preston sold all his interest in his mother's estate to his brother, Thomas L. Preston.

The agreement evidencing this sale is found on pp. 8, 9 and 10, of the printed record. The property thus sold is described in the following language:

"The said John S. Preston hath this day bargained and sold unto the said Thomas L. Preston all the right, title, claim, and interest which he, the said John S., has derived or is entitled to as one of the devisees under the will of his mother, Sarah B. Preston, dec'd, in the Salt Works estate, in the county of Smyth, and all the lands of every description whatever, cleared or woodland, either adjacent to or in the vicinity of the said Salt Works estate, in the counties of Smyth and Washington. It being intended by this sale to embrace the said John S. Preston's interest, being the one-third part thereof, in the said Salt Works estate and all the lands, with their appurtenances, which were devised therewith by the said Sarah B. Preston, dec'd, to her three sons, Wm. C. Preston, John S. Preston, and Thomas L. Preston. The said John S. Preston also agrees to sell, transfer and assign unto the said Thomas L. Preston all the right, title and interest in the estate of his mother, Sarah B. Preston, deceased, of every description, real, personal and mixed, to which he the said John S. Preston is or may be entitled, as one of the residuary devisees under the will aforesaid. And the said John S. Preston further covenants and agrees with the said Thomas L. Preston that he will make to him, by deed or deeds, with general warranty, a good and sufficient right and title to his interest aforesaid in the Salt Works estate and all the lands and appurtenances devised therewith as aforesaid, and also to his residuary interest aforesaid in the estate of the said Sarah B. Preston, deceased."

For this property, Thomas L. Preston agreed to pay $50,000, to assume the payment of all the legacies charged upon the Salt Works estate, and to indemnify John S. Preston against all liability for the debts of sundry partnerships of which he was a member. The agreement also contained the following clause, which constitutes the contract which this suit was brought to enforce:

"The said Thomas L. Preston, in part for the consideration hereinbefore expressed, also agrees to convey to the said John S. Preston, a tract of land adjoining the Salt Works estate, containing about three hundred and fifty acres, and known as the Campbellsville tract,

and also a sufficient quantity of other lands adjoining the said tract to make up the quantity of five hundred acres of land."

On the same day, August 30th, 1847, John S. Preston made a deed, conveying all the property referred to in the said agreement to Thomas L. Preston, and Thomas L. Preston on the same day conveyed the property thus purchased of John S. Preston, together with all his own interest in the same property to C. F. Trigg, in trust to secure the payment of the said $50,000 and interest to said John S. The deed from John S. Preston to his brother was not recorded and appears to have been lost. Its execution is however abundantly proved by the deed of trust to Trigg, in which the fact of execution is several times repeated.

The property thus conveyed to Trigg, Trustee, is the identical property described in the will of Sarah B Preston, and in the agreement of August 30th, 1847. In the latter, John S. Preston *made no reservation whatever*, but *conveyed to Thomas L. all the property devised to him by his mother.* If the property above, called "Campbellsville" and the 150 acres adjoining, was derived by John S. Preston from Sarah B Preston, then by the deed of August 30th, 1847, he conveyed it to Thomas L., who, on the same day, conveyed it with the consent of John S. to Trigg, in order to secure the payment of $50,000 and interest to said John S.

But this is not all. It appears that John S. Preston, who then resided in South Carolina, left all his property in Virginia in the hands of his brother, Thomas L. Preston (see dep. T. L. P., p. 51, 7 q). On the 25th day of April, 1848, Wm. C. Preston by his deed, reciting an agreement made the 9th of December, 1847, conveyed to Thomas L. Preston all his interest in the estate of his mother for the consideration of $25,000.

On the 7th day of January, 1850, Thomas L. Preston and wife convey all the interest thus bought of Wm. C., together with all his own interest in the same property—*making no exception or reservation whatever*—to C. F. Trigg, in trust to pay the said $25,000 and its interest to Wm. C. Preston.

On the 7th day of July, 1859, Thomas L. Preston, having become greatly embarrassed, made a general deed of trust, by which he and his wife unite in conveying the said properties known as the " Preston Salt Works, with all the appurtenances and append-

ages thereto belonging and containing 6,995 acres," and sundry other estates, and also a large amount of personal property and debts, stocks, &c., to Robert Gibboney in trust to secure the payment—first of all incumbrances on said property—among them a debt *to John S. Preston of about one hundred and ten thousand dollars*, and to Wm. C. Preston of about $25,000, &c.

Again, and before the last-named deed was executed, on the 11th day of October, 1858, Thomas L. Preston leased the Salt Works property, describing it as containing "7,000 acres more or less," and also The King Salt Works, containing 4,000 acres, to Messrs. Spencer, White, Ackerman & Palmer, for the term of ten years.

On the 10th day of June, 1862, Robert Gibboney, trustee under the deed above referred to, sold to Stuart, Palmer & Parker, "all the estate, right and title and interest which the said Thos. L. Preston conveyed to the said Robert Gibboney by his deed aforesaid, bearing date the 7th day of July, 1859, in the Preston Salt Works estate and the lands contiguous thereto, estimated to contain 6,995 acres, be the same more or less, being the lands intended to go with the Salt Works estate in said Preston's deed expressed, &c." See Record, pp. 57 and 58. By a later survey, it will be seen the actual quantity of land was only 5,993 acres.

It thus appears that all the interest of John S. Preston in his mother's estate—including the property now sought to be recovered by the appellant—passed from him to Thos. L. Preston on the 30th day of August, 1847; that said property then passed from Thos. L. Preston to Trigg, trustee, in trust to secure a debt due John S. Preston; that afterwards T. L. Preston conveyed it, or his interest as it then remained, to Trigg, in trust to secure a debt of $25,000 to Wm. C. Preston; that in 1858 T. L. Preston leased said property as his own to Spencer, Ackerman & Co., for 10 years, and that in 1859 he conveyed said property in a general deed to secure his legion of creditors, amongst whom John S. Preston appears as chief—the debt of $50,000 having then swollen to $110,000—all this time the said John S. Preston having left the said property, Campblsville and the 150 acres, in the absolute control and management of his brother Thos. L.

And now Thos. L. Preston, having become insolvent, and John

S. Preston, having received large sums of money under and by virtue of the deed of trust to Gibboney, and then having assigned away all the balance of his interest in the trust-fund (q. 5, p. 47) he, in 1870, by his writing which will be found on pp. 10 and 11, (which the Court will observe is not a deed, but only a parol contract) sells to the appellant all his property, "known as Campbellsville tract, containing 500 acres more or less, the same being *a part* of the Preston Salt Works tract, and reserved by said John S. Preston in his sale to Thos. L. Preston of his interest in said Salt Works tract under the will of Sarah B. Preston."

Such are the facts of this case as they appear upon the Record.

Upon these facts I undertake to show that no Court of Equity can entertain the suit of the appellant for a specific performance of the contract upon which he relies, and for the following reasons:

1. Because the contract relied on is too indefinite and uncertain.

2. Because of the laches of the appellant and of those under whom he claims.

3. Because the parties now in possession are bona fide purchasers of the property without notice. Trigg & Gibboney, Trustees, were purchasers, and entitled to all the protection afforded to purchasers for value. 2 *Lomax Dig.*, 449, 489. *Beverley* v. *Brooke*, 2 *Leigh* 446. *Wickham* v. *Lewis, Martin & Co.*, 13 *Gratt.* 157. *Carter* v. *Allan*, 21 *Gratt.*, 247. 2 *Minor's Inst.*, 875 76.

4. Because T. L. Preston, the alleged vendor, having sold his interest in the property, specific performance by him is impossible.

5. Because there is no privity of contract between the appellant and those under whom he claims on the one side and Stuart & Palmer on the other.

6. Because, this is a case in which a court of equity will be neutral, and leave the party complaining to his rights in a court of law, if he has any.

7. Because the claim of the appellant is barred by the statute of limitations.

I need not argue all these propositions; but two or three demand a fuller notice.

1. As to the objection that the contract here sought to be exe-

cuted is too indefinite and uncertain, the Court will observe that the plaintiff in the Court below, was forced to amend and explain the contract in his bill. After setting out the contract as calling for a tract of land, called "Campbellsville," as "*adjoining* the Salt Works estate," he adds, "the same being *in reality a part* of said Salt Works estate, called Campbellsville," &c. It appears, too, that by said contract John S. Preston actually conveyed his interest in Campbellsville to Thos. L. Preston. He made no reservation whatever. If Campbellsville were in fact a part of the property embraced by the deed from John S. Preston to T. L. Preston, then the failure to reserve it to himself was well-calculated to mislead all who afterwards dealt with the same property, and so the uncertainty, inherent in the contract, was increased.

Again, it appears that T. L. Preston, after the purchase from Jno. S. Preston, always treated Campbellsville as his own property. On the day of purchase he conveyed it to Trigg in trust to secure the purchase money, and that John S. Preston stood by and allowed him thus to use it. This conveyance was plainly made with the knowledge and at the instance of John S. Preston. Again and again afterwards T. L. Preston conveyed and leased it as his own. All this time John S. Preston left the property in the hands of his brother, who finally conveyed it, along with all his other property, in trust to Gibboney, who sold it to Stuart & Palmer.

But when we come to examine into the locality and bounds of Campbellsville, the indefinite and uncertain nature of this contract becomes glaring. Who has been able to locate the property? The original bill declares, "this same Campbellsville tract is well-known and distinguished from the other parts of said Salt Works estate, and can be easily marked out by metes and bounds." This allegation—in aid of the uncertain description of the contract—should have been proved. It has not been proved by a single witness; for though John S. Preston and T. L. Preston, in their depositions, say that Campbellsville can be easily separated from the residue of the Salt Works estate, yet they both fail to show what and where it is—except that it is part of the Salt Works estate lying North of the Holston river; but it is shown by McQuown, the surveyor, that there are 700 or 800 acres North of

the river. Mr. T. L. Preston, who ought to know something of the history of Campbellsville, is utterly at fault in every assertion contained in his deposition. He does not know from whom or by whom it was originally purchased; he does not know why or how it was named Campbellsville; he says there was a separate tract of that name, when it is shown that there never was any purchase made by his ancestors answering to the tract as described in the contract of 30th August, 1847; and, indeed, it appears that all he knew about the matter was a mere *impression*. The map which he drew, and which is given as a part of his deposition, he declares (p. 49, q. 17,) "*does not pretend to be accurate, but only shows the relative positions of the points indicated.*" But when called on to fix the locality known by them as Campbellsville, John S. and Thomas L. Preston point to a portion of the estate which is shown was never known or called by that name by any one else. No deed or record of the property could be found which referred to the property by that name. In the list of the many tracts which compose the whole tract, not one is called Campbellsville. Not one of the old people who for eighty years have lived in the neighborhood ever heard this place designated by any such name. When we go to the record we find that the original patents for this land were issued to Hamberson Lyon by Patrick Henry, Governor of Virginia, (Pr. Rec., pp. 60, 61.) calling for two tracts—one of 370 acres, and one of 150 acres; each tract lying on both sides of tne Holston river. These lands were held by Hamberson Lyon till his death, when they were divided amongst his children, one of whom, Wm. Lyon, took 200 acres on the North of the Holston, which, in 1801, he sold to General Francis Preston, father of John S., Thomas L., and William C. Preston. So that this 200 acres now claimed under a contract calling for Campbellsville was never owned by a Campbell, is only 200 acres, while Campbellsville was said to contain 350 acres, and was from early in this century known by the people around as Broady's Bottom, and never, so far as they knew, was designated by any one as Campbellsville. It is true that Thomas L. and John S. Preston agree in stating that this part of the estate—as to extent and boundaries of which they know nothing certainly—was known in the family as "Campbellsville," but even amongst them the name applied to no certain or easily ascertaina-

ble boundary of land. To make this clear and indisputable I will quote freely from the testimony as found in the record:

1. For the Plaintiffs.

The Plaintiff produced but two witnesses, John S. Preston, the grantor, and father of the Plaintiff, and Thomas L. Preston, his uncle.

(*a*) John S. Preston, p. 45, says that he resides in South Carolina, that he is familiar with the Salt Works estate; that a portion of it is generally known as "Campbellsville," considered to be the North East portion, North East of the Holston river, and North of Walker's Mountain. "*I think* the Western boundary is between 2 and 3 miles from the Salt Works." "*I think* it can be easily identified. *I reserved* it in the sale of the Salt Works. It has been over 20 years since I was on the Campbellsville tract."

(*b*) Thomas L. Preston, p. 48, says: "Campbellsville can be marked off from the rest of the Salt Works property easily and distinctly. It has always been known *in the family* as "Campbellsville," and spoken of by that name. It had been known by that name *in the family* from my earliest recollection. I cannot state how far others know how this land was designated by the family. It was held by a separate title. It was held by my mother. *As to how she acquired it, I cannot state positively*, but to the best of my recollection, *by descent either from her brother, who died before he was of age, or from her father, or it may have been one of the tracts entered and patented for her benefit; the title papers will show.*" He files a rough diagram of the Salt Works property to show what and where the Campbellsville tract is, but as to this he says: "*This diagram does not pretend to be accurate, but only shows the relative points indicated.*" Further on, Mr. P. says: "*My impression is that the tract was derived from my mother's ancestor, named Campbell, and called by my mother after him, "Campbellsville.*" Being asked again whether Campbellsville was so separated from the balance of the Salt Works estate, as to make it easily definable by deed, he says: "I think it was." In the contract between my brother and myself, *we understood* Campbellsville to mean the tract of land lying North of the Holston, and *between that and the line of the Preston property on the North side of Little Piney and Brushy Mountain. My impression* is that the tract known as Campbells-

ville was separated from the other portions of the property owned by Mrs. Sarah Preston by the Holston river, and on the North by a line *near or upon the base of Little Piney and Brushy Mountain." My impression* is that it was a separate and distinct tract. *I cannot state positively the number of acres embraced in it.* As my brother, John S. Preston, to whom the tract belonged LEFT THE MANAGEMENT OF IT TO ME ENTIRELY, I MADE NO MENTION OR RESERVATION OF IT IN THE LEASE TO SPENCER, ACKERMAN & Co. I do not recollect that I mentioned to them the fact that this tract belonged to another party."

This constitutes the evidence produced by the plaintiff to show that Campbellsville was a certain definite and easily ascertainable tract of land. It wholly fails to prove the proposition. The single line about which there is the least certainty, is the Holston river. All else is in doubt; the subject of *impressions* as vague and indefinite as possible. It appears that T. L. Preston knows nothing, and that all his *impressions* are erroneous as to how this property was acquired, and as to how it was named. He shows no plat, no deed, no purchase of any such tract of land as Campbellsville is claimed to be. The whole thing, by the contract produced, was left open to be fixed in the indefinite future, if ever fixed at all; meanwhile, T. L. Preston is left in possession and management of the property which again and again he conveys to strangers as purchasers or tenants, never by word or deed making any reservation in favor of the owner, but treating it all the time as absolutely his own.

THE DEFENDANT'S PROOFS.

(*a*) The contract itself, which is altogether indefinite, and except as to name of the tract and the *quantity* of land. It does not say that the tract to be conveyed *is a part* of the Salt Works estate. It negatives that idea as far as it speaks at all. The tract called for is to be conveyed by T. L. Preston to John S. Preston, not partly reserved by and partly conveyed to J. S. P. It "adjoins the Salt Works estate." All the Salt Works estate and *adjoining* lands are by this contract named as sold by J. S. P. to T. L. P.

(*b*) The conduct of T. L. Preston with regard to *all* the Salt Works estate and adjoining lands. His deeds of trust and lease; the first deed of trust being made to secure J. S. P. on the same

day that J. S. P. sold his interest to T. L. P. By these deeds, it is admitted T. L. P. conveyed the very property now claimed. This was done manifestly (as to the deed of August 30th, 1847), with the knowledge of J. S. P. If Campbellsville had, before this, been a definite and certain tract of land, this act of the two brothers would have been well calculated to put all parties off their guard and authorize them to treat the property embraced in that deed of trust as T. L. Preston's only.

(*c*) The answer of the defendants, Stuart & Palmer, which is responsive to the allegations of the bill, declares that there is no sueh portion of the Salt Works estate as Campbellsville; that the said parties were *bona fide* purchasers of the whole Salt Works estate for value, and without any notice or suspicion that J. S. Preston held an adverse claim to any part of it.

(*d*) The deposition of John Montgomery, p. 52, who says he is 80 years of age; was born near Saltville; lived there all his life; lived on the tract of land in question since 1839; that said tract was always called Broady's farm, and never heard it called by any other name; that before Broady lived there it was owned by Lyon, from whom Gen'l Preston purchased it.

(*e*) B. A Helton, p. 52, who lived at Saltville 8 years between 1839 and 1854, says this place was called Broady's Bottom, and never heard it called by any other name.

(*f*) Andrew Chapman, p. 53, sixty-eight years of age, born at Saltville and resided there till 1851, except for nine years previous to 1819, and lived part of the time on the tract of land in dispute. He says that tract was called "Broady's Bottom," and that he never heard it called anything else, except on one occasion, when McQuown was surveying it. T. L. Preston, who was present, remarked that the tract was called "Campbell's Choice." He says that this tract was embraced by said survey as part of the Salt Works property.

(*g*) H. L. Branson, p. 54, who lived at Saltville most of the time after 1853, and who leased the tract in dispute of Spencer, Ackerman & Co., says the place was known as Broady's Place, and he never heard it called anything else.

(*h*) Thomas E. Gardner, p. 55, says he lived with T. L. Preston from 1856 to 1858, and for him cultivated a field North of the

river; that said place was known as Broady's Bottom, and he never heard it called by any other name.

(*i*) J. A. McQuown, the surveyor, gives a very intelligent deposition. He says the Salt Works estate was surveyed by him for Stuart & Palmer in 1866; that T. L. Preston was present some three days of the time the lines were being run. That the whole tract contained 5,993 acres, including the tract in litigation here; that when they came to the river T. L. P. remarked that this tract was known as "Campbell's Choice," but that he had heard it called Broady's Bottom; that the portion of the Salt Works property North of the Holston contains 700 or 800 acres, and that in all the plats and records of the Salt Works property, there was no such tract as Campbellsville, nor any answering to that tract called for by the contract of August 30th, 1847.

(*j*.) George W. Palmer, who came to Saltville in 1858, who was the lessee and then the purchaser of the Salt Works property, says he rode over the estate for several days with T. L. Preston, who showed him Broady's Bottom as part of the Salt Works property, and that he never heard of Campbellsville as constituting part of that property till after the war, when the appellant appeared and told him that his father had a claim to a tract of 350 acres, called "Campbellsville," and enough more to make 500 acres.

(*k*.) A. J. Starritt, who proves that "Campbell's Choice" was the name of a tract of land some seven miles from Saltville.

In the light of all this testimony, I unhesitatingly claim that this contract is so uncertain as to the location, boundaries and history of the tracts of land in question, that specific execution is impossible.

On this point I refer the Court to the following authorities: *Fry on Spec. Perf.* (2*d Am. Ed'n,*) *pp.* 154, 170, and cases cited, 1 *Story Eq. Jur.* §767; and cases referred to in *Note* 1. *Carr* v. *Passaic, &c., Co.*, 7 *C. E., Green*, 85. The rule that specific performance will be refused where the contract is uncertain, is applied with more than ordinary stringency against assignees and representatives of the contracting parties. *Kendall* v. *Alney*, 2*d Quinn*, 178; *Montgomery* v. *Norris;* 1 *How*, (*Miss.*) 499.

2. On the score of laches, I hardly think it necessary to

Sumn.

refer to authorities. This suit was brought to execute a contract more than twenty-five years after the date of the contract, and after the vendor, T. L. Preston, had, by his first deed of trust to Trigg, treated the property in question as his own. Trigg, trustee, held as a purchaser for value. His title was adverse to J. S. Preston's claim. Trigg's successor is party to this suit, and the appellant is seeking relief against him. J. S. Preston, by accepting the benefit of the deed of trust to Gibboney, trustee, treats that deed as a substitute for the first deed. No court of equity will hear a plaintiff after such laches. If he had sued Trigg at law the claim would have been barred by the Virginia Statute of Limitations. Code of Virginia (1873), ch. 146, §1, where the period prescribed is only ten years, west of the Alleghany mountains, where these lands are situated.

Here the laches of John S. Preston, under whom the appellant claims, were most glaring. He has left his property in the hands of his brother for 25 years; he has allowed that brother to treat the property as his own; has allowed an indefinite and ambiguous contract to remain unexecuted until purchasers from his brother have acquired adverse interests, he all the time contenting himself with his demand for the money interests named in the covenant of August, 1847.

y on Sp. Perf. 422-30.

3. Specific execution of the contract in this case by the vendee, T. L. Preston, has been rendered impossible by his subsequent sale and conveyance of the property. On this point, see 1 *Sugden on Ven. and Pur.*, (*8th Am. Ed'n*) *p.* 223, *note n. to* §26, and cases there cited.

NOTE.—As an apology for the delay in filing this brief, I desire to state that the brief of the appellants' council was not placed in my hands till yesterday, (Oct. 26) rendering it impossible to prepare this note in the time required by the rules of the Court.

T. J. KIRKPATRICK,
For Stuart & Palmer.

Code 1873.
Sec 365

Const 1860.
114
189